

DEPARTMENT OF DEFENSE PRIORITIES AND ALLOCATIONS MANUAL



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ECONOMIC SECURITY

May 26, 1995

FOREWORD

This Priorities and Allocations Manual (PAM) is issued under the authority of DoD Instruction 4400.1, "Priorities and Allocations - Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals," November 16, 1971. This Manual prescribes uniform procedures to be followed by all persons delegated priorities and allocations authority, including those persons involved with awarding or administering contracts for research, development, engineering, acquisition, production, manufacturing, or construction.

DoD 4410.1-M, "DoD Priorities and Allocations Manual (PAM)," June 1, 1961, is hereby canceled.

This Manual is effective immediately. It applies to and is mandatory for use by the Office of the Secretary of Defense (OSD) and all DoD Components and Associated Agencies. See definitions 2 and 9 on page vi. Heads of the DoD Components and Associated Agencies may issue supplementary instructions when necessary to provide for unique requirements.

Send recommended changes to the PAM through channels to:

Principal Deputy Assistant Secretary of Defense for
Dual Use Technology Policy and International Programs
The Pentagon, Room 2A318
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KENNETH S. FLAMM
PDASD, Dual Use Technology Policy
and International Programs



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REFERENCES

- (a) DoD Instruction 4400.1, "Priorities and Allocations - Delegation of DO and DX Priorities and Allocations Authorities, Rescheduling of Deliveries and Continuance of Related Manuals," November 16, 1971.
- (b) Title 15, Code of Federal Regulations, Part 700, "Defense Priorities and Allocations System" (DPAS).
- (c) Title I of the Defense Production Act, as amended, (50 U.S.C. App. 2061 et seq.)
- (d) Selective Service Act of 1948, Section 18, (50 U.S.C. App. 468)
- (e) Executive Order 12742, "National Security Industrial Responsiveness," January 8, 1991
- (f) Executive Order 12919, as amended, "National Defense Industrial Resources Preparedness," June 3, 1994
- (g) Executive Order 12656, "Assignment of Emergency Preparedness Responsibilities," November 18, 1988

DEFINITIONS

In addition to the definitions found in the Defense Priorities and Allocations System Regulation (See Appendix A), the following definitions apply throughout this Manual:

1. Allocations. Prioritized releases of limited supply materials to authorized programs.
2. Associated Agencies. Non-Department of Defense Agencies that receive delegations of priorities and allocations authority from the Under Secretary of Defense (Acquisition & Technology) in support of their defense-related activities.
3. BRICK-BAT. BRICK-BAT category are approved by the President and are of the highest national priority based on key political, scientific, psychological, or military objectives. All BRICK-BAT programs are assigned a DX priority rating.
4. Construction Equipment. All items of equipment identified in Figure 4-1.
5. CUE-CAP. CUE-CAP category are approved by the Secretary of Defense and are the highest DoD urgency based on military objectives. All CUE-CAP programs are assigned a DO priority rating.
6. Defense Contractor. Prime contractors, subcontractors, and suppliers throughout all levels of the contract support structure.
7. Delivery Date. The date of delivery specified on a rated order.
8. Delivery Rescheduling. Rearrangement of a producer's scheduled rated order deliveries to its customers.
9. DoD Components. The Military Departments (Army, Navy, and Air Force) and the Defense Agencies (such as Defense Logistics Agency, National Security Agency, etc.).
10. DoD Master Urgency List (MUL). A list that identifies those programs of highest national and DoD priority.
11. DPAS Officer. An employee of a DoD Component or Associated Agency, responsible for the administration of the DPAS Program. There are two (2) types of DPAS Officers in the DoD:
 - a) The DPAS Officer in a Procuring Activity who has signatory authority for DPAS actions, i.e., BXA-999. Subsection C.4 of Chapter 2 of this Manual list the procuring activity DPAS Offices basic responsibilities.

b) The DPAS Officer in a Contract Administration Office (CAO) whose basic responsibilities are listed in Subsection C.6 of Chapter 2 of this Manual.

NOTE: For purposes of this manual the term DPAS Officer will refer to the Procuring Activity DPAS Officer except as noted otherwise.

12. Installation Materiel. Materiel necessary for installation of production equipment and permanent foundations, and for extension of utilities to the production equipment.

13. Materiel. Any raw, in process, or manufactured commodity, equipment, component, accessory, part assembly, or product of any kind.

14. Operating Elements. The DoD Components and Associated Agencies that administer the DPAS.

ABBREVIATIONS AND/OR ACRONYMS

The following apply to terms or phrases used throughout this Manual and the Defense Priorities and Allocations System generally.

ACO	Administrative Contracting Officer
ASD(ES)	Assistant Secretary of Defense (Economic Security)
BXA-999	A DoC form entitled "Request for Special Priorities Assistance," replaces Form ITA-999.
CAO	Contract Administration Office
DCMC	Defense Contract Management Command
DO	Priority Rating Symbol (Critical to National Defense)
DoC	Department of Commerce
DoD	Department of Defense
DPA	Defense Production Act
DPAS	Defense Priorities and Allocations System
DSS	Department of Supply and Services (Ottawa, Canada)
DX	Priority Rating Symbol (Highest National Urgency)
FAR	Federal Acquisition Regulation
MIPR	Military International Purchase Request
MRO	Maintenance, Repair, and Operating Supplies
MUL	Master Urgency List (classified "SECRET")
OSD	Office of the Secretary of Defense
P&A	Priorities and Allocations
PCO	Procuring Contracting Officer
SPA	Special Priorities Assistance
SSA	Selective Service Act
USD(A&T)	Under Secretary of Defense (Acquisition & Technology)

CHAPTER 1

INTRODUCTION

A. PURPOSE

This Manual provides the operating guidelines by which DoD Components and Associated Agencies implement the Defense Priorities and Allocations System (DPAS) (15 CFR 700) (reference (b)). (See Appendix A.) Various subparts of Part 700 are referenced throughout this Manual.

B. LEGISLATIVE BACKGROUND

1. The Defense Production Act (DPA) (50 U.S.C. App. 2061, et seq.) (reference (c)) was enacted in 1950 to help ensure, among other measures, the timely availability of materiels and facilities needed for defense. Title I of the Act, entitled "Priorities and Allocations," authorizes the President to:

a. Require the priority performance of certain defense and energy contracts and orders.

b. Allocate materiels, service and facilities to promote the national defense.

2. Although many revisions to the DPA have been made, the basic intent of Title I and its implementing regulations remain unchanged, namely to help keep current defense and energy programs on schedule and to provide a framework for rapid industrial mobilization in case of national emergency.

3. In the event of a lapse of the DPA, Section 18 of the Selective Service Act (SSA) (50 U.S.C. App. 468) (reference (d)), (reference (e)), (reference (f)), (reference (g)) provide similar priorities authority. Under the SSA, the Government is authorized to obtain prompt delivery from contractors of any articles or materiels exclusively for the use of the Armed Forces of the United States. This authority, with certain limitations, will provide support for the administration of a priorities system for critical resources.

C. SCOPE

1. The Department of Commerce (DoC) is delegated authority for industrial resources under the DPA and SSA, and is responsible for developing, coordinating, administering, and enforcing the DPAS regulation to implement this authority. The DoC has authorized the DoD to apply priority ratings to contracts and orders that support the DoD-certified national defense program categories identified in DPAS Schedule I.

2. This Manual implements the DPAS for the DoD with minimal repetition of its provisions; thus, it is recommended that users of this Manual become familiar with the DPAS. (See Appendix A.) It is not intended as a guide for industry, and it may not be used for legal interpretation of the DPAS or related documents.

CHAPTER 2

AUTHORITIES, RESPONSIBILITIES, AND FUNCTIONS

A. AUTHORITY

1. Title I of the DPA authorizes the President to:

a. Require that contracts or orders relating to certain approved defense or energy programs be accepted and performed on a preferential basis over all other contracts and orders.

b. Allocate materiels, services and facilities in such a manner as to promote approved programs for the national defense.

2. Section 18 of the SSA authorizes the Government to obtain priority delivery of any articles or materiel exclusively for the use of the Armed Forces of the United States. This applies to any person operating a plant, mine, or other facility capable of producing the required quantities of such articles or materiel.

B. DELEGATION OF AUTHORITY

1. To carry out the DPA and SSA authorities referenced in section A of this chapter, the President, by Executive Orders (reference (e) and (f)) has delegated Priorities and Allocations (P&A) authority for industrial resources (articles, materiels, services, and facilities, including construction materials) to the Secretary of Commerce to support certified national defense programs.

2. The Secretary of Defense has been delegated the responsibility to determine and certify which national defense programs (military production and construction, military assistance to any foreign nation, stockpiling, outer space, and directly related activities) may be supported by the P&A authority.

3. The DoC implements its delegated P&A authority by issuing, administering and enforcing the DPAS Regulation 15 CFR 700. The Secretary of Commerce has redelegated authority under the DPAS to the Secretary of Defense to apply priority ratings to contracts and orders which support DoD certified national defense programs. These programs are identified in DPAS Delegation 1 (Appendix A).

4. The Secretary of Defense has redelegated the DPAS authority to the Under Secretary of Defense (Acquisition & Technology) (USD(A&T)), with further redelegation to the Assistant Secretary of Defense for (Economic Security) (ASD(ES)) to implement the DPAS.

C. FUNCTIONS AND RESPONSIBILITIES

1. The Under Secretary of Defense (Acquisition & Technology) (USD(A&T)) shall:

a. Oversee the execution of DPAS and productive capacity expansion authorities delegated to the Secretary of Defense in references (b), (e) and (f).

b. Determine which DoD programs shall be rated under DPAS.

c. Nominate to the Secretary of Defense for the President's approval, DoD programs of the highest national priority for inclusion in the DoD's Master Urgency List (MUL) (Chapter 8 of this publication). If approved, for inclusion in the MUL, these programs will be identified under the category BRICK-BAT (DX rating).

d. Nominate for the Secretary of Defense's approval DoD programs of highest defense priority for inclusion on DoD's MUL. If approved, for inclusion on the MUL, these programs will be identified under the category CUE-CAP (DO rating).

e. Provide as appropriate, written delegations of P&A authority to the heads of DoD Components and Associated Agencies, including authority to endorse requests for Special Priorities Assistance (SPA).

2. The Assistant Secretary of Defense (Economic Security) (ASD(ES)), unless otherwise provided by the USD(A&T), shall:

a. Establish DoD DPAS policy and guidance including a DoD Priorities and Allocations Manual (PAM).

b. Ensure DoD compliance with the DPAS.

c. Resolve internal DoD conflicts by allocating limited resources (such as materiel and manpower) among authorized programs, when necessary.

d. Resolve any internal DoD diversion of deliveries and/or production rescheduling conflicts.

e. Resolve DPAS conflicts involving other Federal Agencies in conjunction with the Assistant to the President for National Security and cognizant Federal Agencies.

f. Review requests for SPA and sponsor such requests to the DoC, when appropriate.

g. Develop the MUL (classified "SECRET") to reflect programs approved by the President or the Secretary of Defense.

h. Review audits on the use of priority ratings by foreign contractors issuing rated orders to domestic suppliers.

3. The Heads of DoD Components and Associated Agencies shall:

a. Designate DPAS officers and alternates, and authorize them to endorse requests for SPA; and, forward names of DPAS officers and alternates to the ASD(ES).

b. Ensure that all elements of their respective components or agencies are in compliance with the DPAS and this Manual.

c. Delegate, in writing, DPAS authority through appropriate channels to operating DPAS officers in subordinate elements.

d. Ensure that their personnel (DPAS officers) responsible for implementing the DPAS are thoroughly familiar with its provisions and with the provisions of this Manual.

e. Establish internal operating procedures to:

(1) Designate and train DPAS officers at all subordinate organizational levels that award or administer defense contracts. (Maintain DPAS officer directory including names, telephone numbers, and organizational addresses.)

(2) Review, when required, requests for SPA for urgency, nonavailability of internal solutions, and sufficiency of impact statements. (See Section B of Chapter 5.)

(3) Allocate materiel in short supply to programs according to DoD internal priorities using production delivery schedules, contract commitments, and program priorities, as established by the MUL.

(4) Reschedule deliveries of assigned items so as to support DoD Program objectives.

(5) Conduct internal audits and compliance reviews.

4. Procuring Activity DPAS Officers shall:

a. Participate in and/or perform compliance reviews at contractor facilities with the Defense Contract Management Command (DCMC) representative. Remind problem suppliers of DPAS requirements and determine if such suppliers are in compliance

with DPAS. Report problem contractors to higher headquarters, as appropriate.

b. Develop training materials; train Government representatives, and provide orientation briefings to executives, Program Management Offices (PMOs), and contracting production management personnel. Review implementation of the DPAS by all persons who are in receipt of rated orders.

c. Review and validate requests for SPA to determine compliance with DPAS criteria, adequacy of internal resolution actions and impact statements, and urgency of the request to the component's or agency's mission.

(1) Determine if other sources (including DoD inventories, new contracts, and repair contracts) can alleviate the shortage.

(2) Assist and advise the contracting officer in determining whether a contract modification should be issued to authorize additional compensation such as premium pay.

(3) Resolve SPA cases when possible.

(4) Document actions taken on interservice/agency conflicts or unresolved requests for SPA and forward them to higher headquarters in accordance with Chapter 5.

d. Approve contractors' requests for authorization to apply priority ratings to orders for production or construction equipment. (See figure 3-2, DD Form 691.)

e. Submit nominations for inclusion in the MUL. Review currency of MUL Programs BRICK-BAT or CUE-CAP designations as necessary, but as a minimum annually. (See Chapter 8.)

5. Contracting Activities shall:

a. Apply priority ratings to contracts or orders in accordance with the DPAS, the Federal Acquisition Regulation (FAR 12.304), this Manual, and delegations and procedures established by their component or agency head.

b. Prepare a Request for SPA whenever they are unable to obtain timely delivery of items or for any other reason as set forth in the DPAS and are unable to resolve the problem at the local level. (See Appendix A.)

c. Have their DPAS officer review and resolve, if possible, each request for SPA submitted by their contractors, CAO DPAS Officer, or prepared internally.

d. Provide impact statements to support requests for SPA.

e. Forward unresolved requests for SPA to the higher headquarters DPAS officer.

6. Contract Administration Office (CAO) DPAS Officers shall:

a. Provide training to other CAO representatives

b. Schedule regular DPAS briefings and training for contractors to assure awareness of responsibilities and benefits.

c. Review contractors' compliance with the DPAS on all rated prime contracts, subcontracts (when authorized), and purchase orders.

(1) Confirm that rated orders are given preferential treatment.

(2) Check placement into contractor's queue for best delivery schedule.

d. Provide the PCO a heads up when the contractor is encountering production problems which might cause delinquencies.

e. Verify DX rated orders with the procuring activity DPAS officer as necessary.

f. Document cases when a cognizant contractor refuses or is unable to comply with the DPAS, and forward to the procuring activity DPAS officer.

g. Process DD Form 691 request for rating authority for equipment to procuring activity DPAS Officer for approval.

h. Advise contractors to investigate all other potential solutions (substitution, cannibalization, etc.) in trying to resolve production problems.

i. Advise contractors to prepare requests for SPA when appropriate and other alternatives and expediting methods were unsuccessful.

j. Review SPA cases to ensure all pertinent information (statement of urgency, Program impact, etc.) is provided to support request.

k. Forward unresolved requests for SPA to the procuring activity DPAS Officer.

1. Respond to requests from procuring activity personnel seeking information on cognizant contracts in support of DPAS actions.

CHAPTER 3

AUTHORIZED PROGRAMS

A. GENERAL

The DPAS is designed to be largely self-executing. However, the preferential scheduling of defense contracts and orders does not take place until an authorized Government contracting officer makes the contract a "rated order." This is done by the contracting officer or the authorized representative placing a priority rating in the appropriate block on the face of the contract or purchase order, specifying required delivery dates, adding the statement found in 15 CFR 700.12(d), (Reference (b)), and signing the contract or purchase order. In turn, prime contractors are required by DPAS to extend the priority rating to lower tier contractors and suppliers, thereby making all lower tier contracts and orders "rated orders."

B. DETERMINING IF A CONTRACT MAY BE RATED

1. Assign a priority rating to all defense contracts and purchase orders (to include commercial items) in support of authorized programs unless prevented by the limitations in 15 CFR 700.18 (reference (b)) or as listed below.

2. Do not assign a priority rating to defense contracts or purchase orders for items excluded by the DoC in DPAS Delegation 1:

a. Items may not be directly procured by or for DoD using Delegation 1 authority, unless those items are to be used as production materiel for an authorized Program.

b. Civilian items procured for resale in military exchanges or packaging for such items.

c. Items purchased exclusively from retail establishments.

d. Items to be used primarily for administrative purposes, such as for personnel or financial management.

e. Any items that do not directly support logistics, tactical, or operational Program requirements (e.g., typewriters and furniture), liaison vehicles (e.g., passenger aircraft and cars), and personal items of clothing and equipage (e.g., T-shirts, insignia, and unauthorized personal items).

3. Restrictions also apply to use of ratings when purchasing computer systems and/or peripheral equipment:

a. The DoD Components shall use priority ratings only when the computer system and/or peripheral equipment will become an integral part of an end item that is necessary to conduct strategic or tactical military operations; necessary for logistics support of military operations; or necessary for research and development (R&D), production, testing, or construction at Government-owned facilities.

b. Defense contractor requests to use priority ratings for the acquisition of computers and peripheral equipment as privately-owned capital equipment shall be processed on DD form 691 (section D.). Authorization shall not be granted until the request is thoroughly evaluated by the appropriate Administrative Contracting Officer/Procuring Contracting Officer (ACO/PCO) to assure the equipment:

(1) Is to be used for defense-related R&D, production, or construction purposes (i.e., computer-aided design, testing, production control).

(2) Is needed to ensure timely deliveries on priority rated defense contracts and purchase orders for authorized programs.

(3) Has the smallest capacity available that is sufficient to meet all defense related requirements.

c. Priority ratings shall not be used when the equipment will be:

(1) Financed by the DoD Components with nonappropriated funds.

(2) Used primarily for administrative or business purposes such as financial management, insurance programs, commissary or base exchange operations, or personnel, education, and training programs.

C. SELECTING THE CORRECT PRIORITY RATING

1. Follow 15 CFR 700.11 (reference (b)) to select the correct priority rating. Apply a DO rating to all contracts and purchase orders supporting DO-rated programs. Apply the DX rating to all contracts and purchase orders supporting an authorized DX Program. (See MUL for guidance.)

a. A DX rating may be used to support portions of a DO-rated Program when:

(1) An end item or component from a DO-rated Program is needed to directly support the DX-rated program's schedule, and/or,

(2) The DO-rated Program item's scheduled delivery will not satisfy the DX Program requirements; or,

(3) A significant risk of delivery delay caused by competing rated programs is present in the manufacturing supply chain.

b. When use of a DX rating is determined to be appropriate, the DO-rated Program office shall obtain a statement from the DX-rated Program office confirming the DX rating and required delivery dates for the DO-rated Program item(s). DPAS regulation requirements to distinguish between DX and DO-rated items on each contract or purchase order shall be followed.

2. Select the appropriate Program identification symbol from DPAS Schedule 1. (See Appendix A.) Use only Program identification symbols for which DoD is shown as a "Delegate Agency."

3. Select the Program symbol that best covers the items to be acquired. For example:

a. A contract for aircraft engines would use "A1," for missiles "A2," for miscellaneous "C9," etc.

b. A contract for furnishing production equipment to be owned by the Government would use "B9."

4. If there seems to be a choice, select the more specific of the Program symbols. For example:

a. A contract for aircraft would use "A1," which would apply to all contractor-furnished equipment including electronics.

b. A contract for Government-furnished electronic equipment to go into the aircraft would use "A7."

D. OBTAINING RATING AUTHORITY FOR ITEMS LIMITED BY 15 CFR 700.18

1. 15 CFR 700.18(a) (reference (b)) addresses general limitations on placing rated orders. Procedures for authorizing the use of priority ratings to support acquisition of items covered by these limitations are in subsections D.2. through D.5 below. DPAS section 700.18(b) addresses jurisdictional limitations covering those items that are under the authority of other agencies and therefore excluded from DoC authority; thus the DPAS does not apply to such items.

2. Rating Orders for Production and Construction Equipment

a. Persons delegated authority pursuant to Section C of Chapter 2 may authorize priority ratings for the following:

(1) Production equipment required to support DoD programs when the equipment is necessary for timely performance of rated orders and timely delivery of the equipment cannot be obtained otherwise.

(2) Construction equipment when the equipment is used for authorized DoD construction projects and timely delivery of equipment cannot be obtained otherwise.

b. Priority ratings for purchases of production or construction equipment by contractors may be authorized by using DD Form 691.

c. The contractor submits the DD Form 691 to the CAO DPAS Officer for initial review and concurrence/nonconcurrence with the request. Upon completion of the review by the CAO DPAS Officer, a recommendation (concurrence or nonconcurrence) is forwarded to the procuring activity DPAS Officer or through the procuring activity DPAS Officer to a person delegated this authority. Either the procuring activity DPAS Officer or the person delegated authority determines if the requirements in the following paragraphs d. through h. are satisfied. If the requirements are satisfied, the approved DD Form 691 is forwarded to the contractor via the CAO DPAS Officer for action. The approval shall designate whether a DO or DX rating is authorized. The rating level is determined by the highest program rating to be supported by the production or construction equipment.

d. Criteria for DPAS officer approval of DD Form 691:

(1) The nonavailability of like equipment in the contractor's plant being used on rated or unrated orders.

(2) Delay of rated defense contracts would occur if the application were disapproved.

(3) The capacity deficiency cannot be resolved by authorizing overtime on critical machine operations.

e. Production equipment for which priority ratings may be authorized includes:

(1) Machine controls and devices.

(2) Scientific instruments and equipment needed for research and development.

(3) Tools, jigs, dies, fixtures, and major repair parts necessary to fulfill a defense contract if the items cannot be rated as maintenance, repair and operation (MRO) supplies.

(4) Equipment for service contractors in support of authorized programs, whether or not the service contract is rated.

(5) Computer systems and peripheral equipment that will be used for defense-related research and development, production, testing, or construction purposes (i.e., computer-aided design, testing, production process control).

f. A priority rating may not be used or authorized for use by a defense contractor for the acquisition of a "super computer" without the written approval of the ASD(ES). Super computers are defined as computer equipment and peripherals that are comparable (within 10 percent) to the fastest machines available for general purpose use.

g. A separate authorization to use a priority rating is not required for production equipment that is to be installed as part of a construction project (includes acquisition and installation of the equipment).

h. Borderline cases and requests for exceptions or for further guidance on these policies should be referred to higher headquarters for consideration on a case-by-case basis.

3. Rating Authority in Advance of a Rated Prime Contract

a. 15 CFR 700.51(c) (reference (b)) authorizes a person to request a priority rating for orders before actually receiving a rated order. Requests for SPA for this purpose shall be submitted to the PCO in accordance with 15 CFR 700.51(c)(2) (reference (b)) and support the request by responding to the criteria in 15 CFR 700.51(c)(3) (reference (b)).

b. The PCO shall send the Request for SPA, according to internal instructions, to the cognizant operating DPAS officer, who will review and act on the request according to procedures in Chapter 5 of this Manual.

4. Rating Authority for Coproduction and Other International Defense Programs

Refer to Chapter 7.

5. Rating Authority for Other Items Under DoC Jurisdiction

Priority ratings may be authorized by DoC for the acquisition of any items excluded from rating under 15 CFR 700.18(b)(3) (reference (b)). Persons requesting ratings on such items shall document that the items are necessary for timely performance of rated orders and timely delivery of the items cannot be obtained otherwise. This justification will accompany

the Request for Special Priorities Assistance (Form ITA-999), (to be replaced by BXA-999 upon depletion of ITA-999 forms), and with DoD sponsorship be submitted to the DoC. (See Chapter 5.)

Federal Supply Classifications
Classes, Groups, and Items Not Eligible
For Priority Ratings

Group

- 35 Services and trade equipment---except:
 - 3510 Laundry and dry cleaning equipment
 - 3520 Shoe repairing equipment
 - 3530 Industrial sewing machines and mobile textile repair shops
 - 3540 Wrapping and packaging machinery
- 71* Furniture
- 72* Household and commercial furnishing and appliances---except:
 - 7240 Household and commercial utility containers
- 73* Food preparation and serving equipment---except:
 - 7310 Food cooking, baking, and serving equipment
 - 7320 Kitchen equipment and appliances
 - 7360 Sets, kits, and outfits---food preparation and serving
- 74** Office machines, visible recording equipment, and data processing equipment
- 75* Office supplies and devices
- 77* Musical instruments, phonographs, and home-type radios
- 78* Recreational and athletic equipment
- 79* Cleaning equipment and supplies
- 85* Toiletries

Figure 3-1, Federal Supply Classification Classes, Groups, and Items Not Eligible for Priority Ratings

Group

87+ Agricultural supplies

91*+ Fuels, lubricants, oils, and waxes---except

9135 Liquid propellant fuels and oxidizers,
chemical base

9150 Oils and greases---cutting, lubricating,
and hydraulic

9160 Miscellaneous waxes, oils, and fats

94* Nonmetallic crude materials---except

9420 Fibers---vegetable, animal, and synthetic

99* Miscellaneous

Class

7630 Newspapers and periodicals

7660 Sheet and book music

8325 Fur materials

9610 Ores

* The DoC will consider requests for special priority rating authorization in the procurement of these items.

** This group does not include general purpose automated data processing equipment, software, supplies, and support equipment.

+ Only those items subject to DoC authority as delegated by E.O. 12919 (reference (f)).

Figure 3-1, Federal Supply Classification Classes, Groups, and Items Not eligible for Priority Ratings, continued

CHAPTER 4

CONSTRUCTION

A. GENERAL

1. This chapter provides some special procedures that are applicable to certified construction projects. The DoD operating element will use the "C2" program for all military base construction where applicable.

2. Construction equipment includes any type of construction machinery and equipment. Examples are listed in Figure 4-1.

B. PRODUCTION EQUIPMENT FOR CONSTRUCTION PROJECTS

The DoD operating element will use the "C2" program identification symbol when authorizing construction contractors to use a priority rating to acquire:

1. Production equipment to be used in the completed construction project.

2. Construction machinery and equipment to be used as production equipment in the completed construction project.

3. Construction materials required for installation in a construction project.

C. CONSTRUCTION EQUIPMENT FOR CONSTRUCTION PROJECTS

1. U.S. Construction Projects. If a construction contractor needs a rating to secure delivery of construction equipment to meet a certified defense Program schedule that cannot otherwise be met, DD Form 691 may be filed with the DoD Component or Associated Agency to apply for a priority rating of DO or DX. (See Chapter 3, Section D.) DPAS officers will ensure that:

a. The equipment is essential to the completion of the project.

b. No substitute equipment is available or the equipment is so specialized that available substitute equipment can not be used.

2. Offshore Construction Projects

a. The DoD Component and Associated Agencies will apply the DO or DX priority rating to purchases of construction equipment made in the United States for use offshore.

b. The DoD Component and Associated Agencies may authorize U.S., Canadian, or other foreign construction contractors to use a DO or DX priority rating for purchase of construction equipment in the United States for offshore use on certified DoD construction projects under the same procedures and actions applicable to U.S. construction projects.

c. Canadian or other foreign construction contractors should apply for priority rating as outlined in Chapter 7.

d. "Offshore" includes all areas not within the United States, its territories, or possessions.

D. MILITARY HOUSING

All military and family housing on or off military bases and reservations, including housing covered by Title VIII of the National Housing Act, is the DoD's responsibility. Construction of these facilities is included as part of the DoD Construction Program (Program Identification Symbol "C2"), and priority ratings may be issued as provided in this chapter.

E. PRIVATE INDUSTRIAL EXPANSION CASES

1. The use of priorities and allocations authority by the DoD for construction is limited to Government-financed programs such as the "C2" certified Program. However, some construction projects that are not normally eligible for a priority rating may be of sufficient importance to DoD programs to justify DoD support. The DoC authorizes priority ratings for private industrial expansion and may assign the DX or DO rating symbol to construction projects as appropriate.

2. The DoD Component and Associated Agencies may sponsor applications for priority rating authority on Form BXA-999 (See Chapter 5), through the OASD(ES), to the DoC covering privately financed industrial expansion projects if they are of direct interest to their programs. The following criteria should be applied to such applications:

a. There is an actual or potential shortage of facilities to produce needed items or to provide needed services.

b. The proposed facility will supply items or services in support of certified DoD programs.

c. Construction of the facility cannot be completed in accordance with the proposed or established construction schedule without use of the priority rating authority.

EXAMPLE LIST OF CONSTRUCTION EQUIPMENT

<p>Air Guns, all types Bits, air-drill, removable Bituminous equipment: Asphalt plants Distributors Heaters Kettles Mixers Pavers Spreaders, aggregate Blades (cutting edges): grader, dozer; scraper; snow plow Buckets, concrete equipment Buckets and dippers for cranes, shovels, or draggles Catch basin cleaners Chutes, concrete equipment Concrete equipment: Batters and batch plants Bins Curb and gutter machines Cutting machines, except masonry Dryers, aggregate Finishers Forms, metal, reusable Graders, sub and fine Heaters Jacks, slab-raising Mixers, including mortar Paves Spreaders Towers Vibrators Cranes, shovels, and draggles: Cranes, construction Cranes, locomotive and rail-truck mounted Cranes, railway, wrecking Cranes, shovel, and attachments Draglines, construction Draglines, walking Pile drivers and hammers Shovels, power Crushing, screening, and washing equipment (portable): All types, except food Derricks, except oil and gas well Discs, wheel-mounted or harrow, construction Dredging machinery, except dredge pipe</p>	<p>Drilling equipment: Augers; earth; power-driven pipe pushers; power-driven tools; air Flushes, street Graders: Elevating Pull-type Self-propelled Mountaineers Grader-mounted equipment Grapples, crane Haulage, units, off-highway: Rear-dump trucks Wheel tractors 70 hp & over Hoists, contractors Hoppers, concrete equipment Loaders: Bucket, elevating Elevating, shoulder-type Tractor-mounted cutting/bits Placers, concrete equipment Rock drills, air, including drifters and stoppers Rollers and compactors all types Rippers, rotors, and scarifiers, drawn Scrappers, self-propelled and pull Snow plows, all types Sweepers and leaf collectors self-propelled and drawn Teeth: bucket, ripper, and scarified Tractors, crawled Tractor-mounted equipment: Dossiers, power-control units, cranes, shovels, side-booms, backhoes loaders scarifiers; winches, and draglines Traffic line marking equipment Trailers, construction, off-highway: Bottom, rear, and slide dump, crawler or wheel-type Logging arches Trenchers, all types Well points, construction Wheels, crawler</p>
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Figure 4-1, Example List of Construction Equipment

CHAPTER 5

SPECIAL PRIORITIES ASSISTANCE

A. GENERAL

When defense prime contracts are properly rated, and the priority ratings are properly extended (15 CFR 700.15) (reference (b)) to the lowest level subcontractor and vendor, the preferential scheduling provisions of DPAS (15 CFR 700.14) (reference (b)) are generally self-executing. Occasionally, however, government buying activities, prime contractors, subcontractors, and other suppliers may need assistance in obtaining timely deliveries or authority to use priority ratings on orders for items not normally ratable. 15 CFR 700.50 through 700.55 (reference (b)) outlines the basic Special Priorities Assistance (SPA) provisions.

B. TYPES OF ASSISTANCE

While SPA can be requested for any reason in support of the DPAS, it is usually provided when a person:

1. Is having difficulty obtaining delivery against a rated order by the required delivery date at any level of the supply chain: prime contractor, subcontractor, or vendor.

2. Wants to accelerate delivery under a rated order due to a change in the military urgency and the supplier wants to do it, but must keep the current delivery schedule because of other rated orders.

3. Cannot locate a supplier for an item needed to fill a rated order or a supplier refuses to sell the item.

4. Needs authority to use a priority rating.

5. Needs assurance that their rated order is receiving appropriate treatment by a supplier.

6. Needs resolution of production or delivery conflicts between various rated orders.

7. Needs help in placing a rated order with a supplier.

8. Needs verification of the urgency of a rated order.

C. REQUESTING SPECIAL PRIORITIES ASSISTANCE

1. Who can request assistance?

a. Anyone with a valid need for SPA in accordance with the DPAS.

b. In most instances, requests for SPA originate with an impacted prime contractor their behalf or at the request of their subcontractor or supplier. The cognizant CAO production personnel should be alert to remind contractors of the availability of SPA. This does not preclude the affected government Program Office from requesting SPA in coordination with the prime contractor when necessary.

c. Buying Activity personnel should also be alert to remind prime contractors of the availability of SPA.

2. When can assistance be requested?

a. Requests for SPA should be made as soon as all reasonable expediting efforts to resolve the problem have been exhausted.

b. Request SPA above the operating DPAS officer level only when there is an urgent need for the item (such as grounded aircraft or a production schedule delay on a critical weapon system), and the urgency is documented by an appropriate buying activity official (usually the program manager).

c. All DPAS Officers should forward any requests for SPA to higher headquarters that (1) they cannot resolve, (2) remain a legitimate problem (i.e., urgent need but order was rejected), or (3) should be forwarded to the OASD(ES) for action.

3. How is assistance requested?

a. Requests are submitted using the Form BXA-999. (See Appendix A.) See 15 CFR 700.50(c) (reference (b)) for obtaining the form. DPAS officers should maintain a supply of Forms BXA-999 on hand to facilitate the submittal of requests for SPA.

b. The applicant completes blocks 1 through 17 and signs the certificate following block 17. The request is then sent to the cognizant office within a DoD Component or an Associated Agency. Requests from prime contractors on their and/or their subcontractor and suppliers behalf are submitted to the local CAO representative and/or DPAS officer, or other designated official at the DoD Component or Associated Agency. Associated Agencies should always process requests for SPA through the OASD(ES) for resolution.

c. The SPA request should be timely; i.e., submitted immediately upon recognition of the problem and that reasonable expediting efforts have not or will not resolve it. This will allow time for the DoD to effect a meaningful resolution of the

problem. However, regardless of timeliness, all valid SPA requests will be accepted and acted upon.

d. To the maximum extent possible, SPA information should be kept unclassified. Classified information shall be handled in accordance with security procedures.

D. ASSISTANCE RENDERED BY DPAS OFFICERS

1. General

a. DPAS officers perform the applicable functions listed in Chapter 2, subsection C.4.

b. Actions taken at all levels during the processing and resolution of the SPA request should be thoroughly documented on the Form BXA-999 and attachments. DPAS officers receiving the form for assistance or sponsorship to OASD(ES) will confirm that the required information, including urgency of rated Program needs, is complete, accurate, and valid.

c. Requests are forwarded through channels to the appropriate Service/Agency Headquarters DPAS officer who may sponsor the SPA to the OASD(ES), which may forward the request to the DoC. The request should include an original and two copies of the Form BXA-999, a copy of the rated contract or purchase order, statement of urgency, and supporting documentation.

2. DPAS officers must ensure that requests for SPA clearly demonstrate that:

a. There is an urgent defense-related need for the item, and the consequences to the certified Program, if assistance is not provided, are as stated.

b. The contractor, applicable CAOs and contract awarding activities, and DPAS offices from subordinate commands have made every reasonable effort to resolve the problem.

c. The applicant is unable to obtain, from any known qualified source, the required item(s) in the minimum practicable quantity or in time to meet Program needs.

d. The non-delivery of the item for which assistance is requested will, in fact, cause delay of a production or construction schedule if it is not delivered by the required date(s).

e. Substitution of item(s) is not possible.

f. The inventory of the applicant cannot sustain the necessary production without delivery of the item.

g. The applicant has placed, or has attempted to place, rated orders for the required item(s) in a timely manner.

3. Rejection of Requests for Assistance

DPAS officers will ensure that:

a. Provisions for mandatory or optional rejection of an rated order (15 CFR 700.13(b), and (c) (reference (b)) do not apply,

b. Conditions for refusal of assistance (15 CFR 700.54) (reference (b)) are not present, and

c. Other extenuating circumstances are not present. Such extenuating circumstances include the following:

(1) The applicant has a financial problem with its supplier, such as failure to pay significantly overdue invoices.

(2) The applicant or supplier has a producibility problem relating to materiel or production and is using its best efforts to solve the problem.

(3) DPAS Officers should forward any Requests for SPA to higher headquarters that (a) they cannot resolve, (b) remain a legitimate problem (i.e., urgent need but order was rejected), or (c) should be forwarded to OASD(ES) for action.

E. CONFLICTS

1. Conflicts for resources within or between DoD Components and Associated Agencies should be resolved internally or referred to the OASD(ES) using Form BXA-999 for communication and record-keeping.

2. When the DoC advises the OASD(ES) of a conflict at the contractor or supplier level, the DoD Component or Associated Agency will be consulted for verification of the required delivery date and the related urgency. Conflicts normally will be resolved based on production operational urgency of the end item.

F. RECORDS AND REPORTS

15 CFR 700.91 (reference (b)) requires making and preserving, for at least 3 years, accurate and complete records of any transaction covered by DPAS. The DoD Components and Associated Agencies will maintain such records in accordance with Component or Agency directives, provided that such records shall also be in compliance with 15 CFR 700.91.

CHAPTER 6

DELIVERY AND PRODUCTION SCHEDULING

A. GENERAL

1. Diversion of deliveries of items from one customer to another or the rearrangement of delivery schedules among several customers may sometimes be necessary to support urgent certified Program needs. Likewise, the production schedules of a contractor may have to be altered.

2. The DoD has been delegated limited authority under the DPAS to reschedule deliveries as provided in this Chapter. (See DPAS Delegation 1 to the DoD.) This authority should be redelegated by the Heads of the DoD Components and associated agencies to each operating element.

3. Rescheduling authority is limited as follows:

a. Only deliveries of items against contracts or orders assigned priority ratings by the DoD may be rescheduled.

b. Rescheduling action may be taken only when it is determined that urgently required items cannot be delivered when needed unless deliveries are rescheduled.

c. Delivery rescheduling action that would adversely affect the production schedules of other rated orders may not be taken by an operating element.

B. RESCHEDULING DELIVERY

1. The data to be obtained from the contractor shall be restricted in general to that required on Form BXA-999.

2. The decision to reschedule deliveries should be based on all available information, including the effect of the proposed rescheduling on those customers to whom receipt of the items will be delayed.

3. Delivery rescheduling is accomplished by a letter of understanding followed by a contract modification issued by the cognizant Contracting Officer, or if necessary, when recommended by OASD(ES), a DoC directive.

C. RESCHEDULING PRODUCTION

1. General

a. While rescheduling the delivery of finished items may relieve temporary shortages, serious problems affecting the delivery of items generally must be resolved at the production scheduling level, before the production of the items.

b. The ASD(ES) may direct a DoD Component to initiate negotiations with a contractor when necessary to reschedule production of items that are essential to meet DoD-certified program needs.

2. Limitations

a. The DoD Components may negotiate changes in production schedules with consenting contractors as provided in this section. However, the negotiating DoD Component may not reschedule production if such action will displace or delay the delivery of any items other than those identified to contracts issued by or on its behalf.

b. Negotiations may be initiated with only one contractor, and not industry-wide, to reschedule production of the selected items within that contractor's facility.

3. Procedure to Reschedule Production

a. Obtain as much information as possible from the contractor on the impact of the proposed production rescheduling on other rated orders.

b. Request SPA if the proposed reschedule of production will impact production and deliveries of items against rated orders not issued by or on behalf of the requesting DoD operating element and customers impacted by proposed reschedule have not agreed to the changes. (See Chapter 5.)

c. Production rescheduling is accomplished by a contract modification issued by the cognizant contracting officer.

CHAPTER 7

INTERNATIONAL

A. GENERAL

1. Projects or programs of foreign countries and coproduction programs between the United States and foreign countries that support the U.S. national defense interests may be afforded priority access to U.S. industrial resources on a basis of parity with U.S. military acquisition. The DoC will act upon a request for priority authority or special priorities assistance only when sponsored by the OASD(ES).

2. Use of the DPAS in support of U.S. military construction offshore is covered in Chapter 4.

3. The DPA, SSA, and the DPAS apply only to transactions in any State, Commonwealth, territory, or possession of the United States and the District of Columbia.

B. UNITED STATES--CANADA

1. Priority Rating Authority Between U.S. and Canada

a. 15 CFR 700.55(b) (reference (b)) contains provisions for obtaining priorities assistance with Canadian suppliers. The DoC coordinates with the Canadian Department of Supply and Services (DSS) (Ottawa) on all matters of mutual concern relating to the administration of the DPAS.

b. The DoD Components and Associated Agencies may not place rated orders with Canadian contractors or suppliers for items needed in support of DoD-certified programs. However, the Canadian supplier should be informed that the items being ordered are to be used for U.S. defense purposes. The Canadian supplier should also be informed that if production or construction items to fill the orders are needed from U.S. vendors, the supplier should contact the DSS for authority to place rated orders in the United States.

c. The DoC authorizes the DSS to use priority ratings in the United States in support of the following certified programs:

- (1) D1--Canadian military programs
- (2) D2--Canadian production and construction
- (3) D3--Canadian atomic energy Program

d. The DSS may authorize the use of a D0 or DX rating for procurements in the United States that support rated U.S. programs.

e. Contracting officers issuing contracts for acquisitions in Canada should be familiar with the Canadian Commercial Corporation (CCC).

2. Special Priorities Assistance

a. The DoC will provide SPA as needed to Canadian procurements in the United States in support of D1, D2, and D3 programs.

b. The DSS will provide assistance to U.S. procurements in Canada that support U.S.-certified programs. Requests for such assistance must be sponsored by the DoC. Form BXA-999 is used by OASD(ES) and submitted to the DoC for forwarding to the DSS.

3. Compliance

The DSS will ensure that Canadian Government personnel and contractors are in compliance with the provisions of the DPAS when placing rated orders in the United States.

4. Conflicts

The DPAS provisions on the precedence of rated orders apply equally to Canadian-certified rated orders and DoD-issued orders. Any conflicts between Canadian and the DoD-issued rated orders that cannot be resolved by the DPAS rules should be referred to the OASD(ES) for resolution.

C. FOREIGN COUNTRIES' REQUEST FOR USE OF DPAS

This section covers the procedures for authorizing priority ratings in support of the direct defense needs of foreign countries other than Canada for industrial resources required from the United States, whether the end-use items are to be used by the foreign country's military forces or furnished to another country under existing international agreements. If items are to be procured in the United States and timely delivery cannot be obtained without the use of priority ratings, request for priority authority from foreign countries must be sponsored by the OASD(ES).

1. Procedure for Submission

a. U.S.-Financed Military Programs If items must be procured in the United States in support of U.S.-financed military programs, including contracts placed by elements of the DoD, the foreign government or contractor should first endeavor to place unrated orders on U.S. suppliers. If timely delivery cannot be obtained without a priority rating, authority may be requested by written memorandum through appropriate military channels. This memorandum should set forth the circumstances of the case in detail, including the specific information needed to prepare a Form BXA-999, a list of U.S. suppliers, and a statement that the needed items cannot be produced or procured locally from other than U.S. sources in time to meet the approved production or deployment schedule. If the request is considered valid and the need cannot be satisfied by other means, the DoD operating element will execute a Form BXA-999 and forward it to the OASD(ES) for sponsorship to the DoC.

b. Other Foreign Military Programs For direct defense needs other than U.S. financed military programs, a foreign government or contractor, through its government (Ministry of Defense), may request priority rating authority by addressing a memorandum, with the information cited in C.1.a. above, to the OASD(ES) through the country's Washington, DC, military office. The country's defense representative or the overseas command concerned should review the request, prepare a BXA-999, and forward it to the OASD(ES) for sponsorship to the DoC.

2. Special Priorities Assistance

If SPA is needed by the foreign government or contractor to ensure the timely delivery of items after placement of a rated order with a U.S. supplier, or for any other reason under the DPAS, the country's defense representative, the overseas command, or the DoD operating element should prepare a Form BXA-999. If the DoD operating element cannot resolve the problem, the request for assistance should be forwarded to the OASD(ES) for sponsorship to the DoC.

D. OVERSEAS CONTRACTORS SUPPORTING DoD PROGRAMS

1. It is DoD policy that overseas contractors supporting certified DoD programs can be afforded priority rating authority and SPA equally with U.S. contractors. This applies to contractors who have direct DoD contracts as well as to those who are subcontractors to U.S. prime contractors. However, overseas contractors supporting certified DoD programs may not automatically place rated orders with U.S. manufacturers.

2. Overseas contractors who require items from U.S. suppliers should make every effort to obtain these items without U.S. Government assistance. When the contractor is unable to locate a supplier or obtain timely delivery of the items, a letter should be submitted to the DoD contract administration office that administers the prime contract. The request for assistance should contain sufficient information to allow the preparation and submittal of a Form BXA-999.

3. The Military Department under whose jurisdiction the contract is being performed will designate a representative who is responsible for:

a. Determining that the quantities of materiel needed and ordered from the United States are consistent with the contract and schedule.

b. Determining the need for priority rating authority or other SPA.

c. Preparing and submitting a Form BXA-999 through the sponsoring DPAS Officer to the OASD(ES) for sponsorship to the DoC.

d. Initiating additional Form BXA-999s if the overseas supplier needs further assistance in obtaining required materials.

E. COMPLIANCE REVIEWS

1. In some situations addressed under Section D. above, overseas contractors supporting DoD programs may be authorized to use the DPAS rating. The delegation to the contractor will include audit procedures acceptable to the DoD.

2. The DoD Component or Associated Agency authorizing the contractor to use the DPAS for situations under Section D. above, has cognizant responsibility and should require contractual authority to review the contractor's appropriate records and purchase orders to ensure compliance.

3. The Defense Contract Management Command International (DCMCI) will have the responsibility to conduct DPAS compliance reviews to ensure that materiel, components, or parts acquired from U.S. contractors under the DPAS are utilized for the authorized purpose. The cognizant DoD Component may participate, or appoint an appropriate designee to participate, in the compliance review.

F. COPRODUCTION PROGRAMS

1. General

Programs involving components for military systems that are both manufactured and deployed by the United States and foreign countries are known as coproduction programs. As a general rule, if these coproduction programs are designated as authorized programs, the P&A procedures described in this Manual will apply.

2. Priority Rating Authority Between the U.S. and Foreign Countries

a. The OASD(ES) may request priority rating authority from the DoC for specific coproduction programs and may authorize only those foreign firms that have entered into a formal coproduction agreement with a U.S. producer to use priority ratings.

b. Request for priority rating authority by foreign firms providing items necessary to the coproduction Activity are submitted to the OASD(ES) for sponsorship to the DoC on a case-by-case basis.

c. DoD authority in coproduction programs is formally described in the DPAS Delegation 1 to the DoD.

3. Procedure

The procedure to be followed for coproduction programs is briefly described in the following paragraphs:

a. Request for Priority Rating Authority In requesting the priority rating authority for a coproduction Program, the DoD shall provide the DoC with:

- (1) A detailed description of the Program.
- (2) An assessment of its scope and dollar value.

(3) The anticipated procurement to be made in the United States by foreign firms, by value and category (such as materiel, general equipment, and electronic equipment). Items in tight supply in the United States shall be indicated.

b. Issuance of Rating Authority. Upon DoC coordination of the request for priority rating authority, a Program identification symbol in the "J" Series may be assigned to the coproduction Program (for example, "J1" for F-16 Coproduction).

c. DoD Guidance. The OASD (ES) shall issue:

(1) Explicit guidance on the use of priority ratings, their placement, and the listing of authorized programs, as described in the DPAS.

(2) Directions for providing SPA as described in this Manual.

(3) Guidance on compliance with the DPAS.

CHAPTER 8

DoD MASTER URGENCY LIST

A. GENERAL

1. The DoD MUL, (classified "SECRET"), is an integral part of the Priorities and Allocations Program for use by designated DPAS Officers and other authorized persons in resolving conflicts for industrial resources. Candidates for the MUL are nominated by DoD Components and Associated Agencies when competition for industrial resources or conflicts with other DoD programs are being experienced or are expected. Although the military justification for a program's inclusion in the MUL is significant, it may not be sufficient for acceptance. Industrial justification must be provided for candidate programs to show there is competition for industrial resources by other DoD programs. Also, nomination to the MUL should not be used for:

a. Attaining prestige.

b. Obtaining a higher Force Activity Designator (FAD) under the Uniform Material Movement and Issue Priority System (UMMIPS).

2. The MUL may be amended or reissued by the OASD(ES) during crises or emergency situations to reflect the needs of the immediate situation.

B. POLICY

1. Urgency Categories

a. Defense urgency categories have been established as follows:

(1) BRICK-BAT Programs in the BRICK-BAT category are approved by the President and are of the highest national priority based on key political, scientific, psychological, or military objectives. All BRICK-BAT programs are assigned a DX priority rating.

(2) CUE-CAP Programs in the CUE-CAP category are approved by the Secretary of Defense and are the highest DoD urgency based on military objectives. All programs within this category are assigned a DO priority rating and numerical designation to indicate descending sequence of relative priority. CUE-CAP programs have a lower priority than BRICK-BAT programs; however CUE-CAP programs take precedence over non-MUL DO-related programs, if there is a conflict for industrial resources.

2. Coverage and Use

a. BRICK-BAT (DX) programs carry a higher priority than all other programs. All programs in the BRICK-BAT category are of equal priority and no BRICK-BAT Program is to be helped at the expense of another BRICK-BAT Program.

b. Programs and projects listed in the MUL remain on the MUL until withdrawn by the ASD(ES). Updated production and acquisition data shall be submitted as required. The number of programs on the MUL should be minimized to ensure program effectiveness. Programs should remain in the MUL as long as special attention is required to reach and maintain the established production rates or quantities. DoD Components and Associated Agencies will (1) exercise surveillance of these items and (2) take prompt action to recommend to the ASD(ES) the removal from the MUL of any program that does not meet the criteria set forth in section C below.

c. CUE-CAP (DO) programs in the MUL may be arranged in order of descending sequence of relative priority. The relative priority ranking shall be used for guidance to determine resource utilization in the event sufficient resources are not available to fill the needs of all items. If necessary, CUE-CAP programs shall take precedence over other DO-rated programs not included in the MUL, unless urgent mission requirements of non-CUE-CAP programs justify reconsideration. (See Chapter 5.) Other specific uses of the MUL include:

(1) Advising users of the relative priority of the most important defense programs, projects, and items requiring industrial resources.

(2) Aiding the Secretary of Defense in settling interdepartmental conflicts relating to procurement and production planning.

(3) Serving as a guide in processing SPA requests.

(4) Serving as one element in the allocation and distribution of funds to support industrial resource programs.

(5) Indicating the approved DoD urgency standing for proper scheduling to meet the DoD Component's requirements.

(6) Guiding the realignment and restoration of productive capacity to meet military requirements in the event of damage or destruction.

3. Conflicts

The DoD Components and Associated Agencies shall resolve conflicts for industrial resources among themselves, based on the DPAS and, if appropriate, MUL categories. Unresolved conflicts among DoD Components shall be presented to the OASD(ES) for resolution. Conflicts not resolved by the OASD(ES) shall be referred to the USD(A&T).

C. PROCEDURES

1. BRICK-BAT Nominations

a. BRICK-BAT (DX) Program nominations will be submitted by the Heads of the DoD Components and the Associated Agencies as the need arises. These nominations will be forwarded to the OASD(ES). Prior to submittal to OASD(ES) by the Heads of the DoD Components and Associated Agencies, the requesting Program Office will provide a advanced copy to the DPAS Council. Figure 8-1 provides required information and format.

b. To qualify as a BRICK-BAT nomination, a program must satisfy the following conditions:

(1) It must be vital to the national security.

(2) Program schedules must be compressed substantially to meet assigned milestones that are essential to national strategy objectives.

(3) A BRICK-BAT designation will alleviate identified production resources difficulties that are being experienced or are clearly strategic objectives.

(4) It must be demonstrated that a DO rating has resulted or will result in Program slippages that are detrimental to national strategic objectives.

c. After appropriate coordination with responsible OSD offices (Program considerations) and the Joint Staff's Material Priorities and Allocation Board (JMPAB) (military importance considerations), the ASD(ES) will submit a summary statement and recommendation to the Secretary of Defense for decision.

d. Programs approved by the Secretary of Defense will be forwarded to the President for consideration.

e. Upon approval or disapproval, the OASD(ES) will apprise the submitting DoD Component or Associated Agency of the decision and amend the MUL to include the approved BRICK-BAT Program as appropriate.

f. Programs in the BRICK-BAT category will be kept under continuing surveillance by the sponsoring DPAS Officer for updating. Recommendations for deletions of entries from this category as well as for significant changes in scope, dollar amounts, and facilities will be forwarded to the OASD(ES).

2. CUE-CAP Nomination

a. To qualify as a CUE-CAP Program, a Program must be of the highest DoD priority, and industrial resource difficulties must be experienced or expected to occur. The nomination for a CUE-CAP Program should provide the same information and use the same format for BRICK-BAT as shown in figure 8-1(a&b). Programs on the CINC's Critical Items List, published by the Joint Staff, require no additional justification to be nominated as a CUE-CAP Program.

b. Programs within the CUE-CAP urgency category may be assigned a numerical ranking in order of relative urgency.

c. Final approval for CUE-CAP Programs is given by the Secretary of Defense.

3. MUL Procedures During Crises or Emergency Situations

a. In the event of a crisis or emergency situation, the MUL may be reviewed to determine if revisions are required to realign defense Program priorities and to provide more responsive guidance for industrial base support.

b. When requested, the DoD Components and Associated Agencies may provide nominations of programs to the OASD(ES) for inclusion in the crisis MUL.

c. The OASD(ES), working with the Joint Staff's JMPAB and applicable personnel from the DoD Components, is responsible for selecting the final items for the MUL. The crisis MUL shall be submitted through the USD(A&T) for approval by the Secretary of Defense.

4. Classification and Distribution

a. The DoD MUL is published and maintained by the OASD(ES). Because the MUL is classified "SECRET", it is distributed as Attachment B to this Manual on a strict "need to know" basis. The DoD Components and Associated Agencies are authorized to determine the appropriate distribution of the MUL within their organizations following standard security procedures. Interim changes shall be published as amendments and shall be distributed in the same manner.

b. When information is extracted from the MUL, the following classification rules will apply:

(1) The nomenclature of any single Program, when associated with its urgency category designator, is UNCLASSIFIED unless the name of the Program itself is classified; for example, "Project XYZ, BRICK-BAT," where XYZ is itself classified.

(2) A complete listing of any specific category with or without relative priority numbers is classified SECRET.

(3) Classifying less than a complete category and more than a single item will be determined by the affected DoD Component(s) or Associated Agencies following standard security procedures.

(4) Classifying item description, production data, and association of major components to items shall be determined by the affected DoD Component(s) or Associated Agencies.

5. Contract Identification

The "SECRET" classification of the MUL requires that, when dealing with industry, only the appropriate priority rating (DO or DX) be used. Neither the MUL category name, nor the CUE-CAP numerical designation, if applicable, shall be provided or used on industrial papers (including contracts, purchase orders, correspondence or conversation, etc.).

D. INSTRUCTIONS FOR SUBMISSION OF REQUIRED INFORMATION FOR MASTER URGENCY LIST (MUL) NOMINATIONS

Provide in a narrative statement, the following information, and any other relevant information. If the program is classified, special arrangements will be made by the OASD(ES) for submission and processing of the nomination. Identify and/or describe for:

1. Military Justification;

a. The program, the end items to be procured, (including production programs, construction, and R&D projects)

b. How the end items are to be used.

c. The military importance.

d. If applicable, which system and/or item(s) is/are being replaced.

2. Industrial Resource Justification

a. Prime contractors (including Government-owned facilities), major subcontractors, and lower tier suppliers and their locations, especially single and sole source producers, and the components or materiels to be produced by the sub-contractors and suppliers.

b. Potential or anticipated production bottlenecks (including materiel and/or production equipment shortages for either the end items or components involved) and those contractors, subcontractors, and suppliers that may require special priorities assistance to support the Program schedule.

c. Actions being taken or needed to meet Program schedules.

d. Time for completion of the Program under peacetime conditions (assume no waivers for laws, regulations, etc), and surge potential in a crisis.

e. To the fullest extent possible, any impact on the production and delivery of items for other programs by the involved contractors, subcontractors, and suppliers.

f. The total item quantities to be ordered during the effective fiscal year of the MUL, plus two years, and the undelivered item balance, as of the effective fiscal year of the MUL.

g. Any requests for special priorities assistance in support of the program covering a period of not less than 6 months before the date of the MUL nomination.

INFORMATION REQUIRED UNDER SECTION D. OF THE BASIC INSTRUCTION
FOR BRICK-BAT AND CUE-CAP NOMINATIONS

Relative Priority	CINCs CIL Item	Item	Total Quantity and/or Rate per month with Target Dates	Facility
(CUE-CAP)	State CIL Item if it applies	Self-explanatory include production programs, construction, research and development projects.	Show total fiscal year buy and undelivered balance with target date.	List prime contractors major lower tier subcon- tractors and location; subcontractors identify the component manufactured.
Use 1 to 100*				

*Disregard numbers for BRICK-BAT nominations

Figure 8-1a. Information Required for BRICK-BAT and CUE-CAP Nominations

EXAMPLE

CUE-CAP NOMINATION

Relative Priority	CINCS CIL Item	Item	Total Quantity and/or rate per month with Target Dates	Facility
9 (AF)	CIL Item	"X" aircraft (complete spare parts and required construction).	FY 1994-1995, buy 400 each, undelivered balance 1,200 by Dec 31, 1996 FY 1995-1996 spare parts~ 20 million.	ABC Co. Scranton, PA XYZ Co. Chicago, IL Star Co. Dallas, TX
		Communications	Total~1 mil- lion. Comple- ted by Dec 31, 1996	DEC Co. Macon, GA

Figure 8-1a Information Required for BRICK-BAT and CUE-CAP Nominations,
continued.

NATIONAL OR MILITARY JUSTIFICATION
FOR
BRICK-BAT AND CUE-CAP NOMINATIONS

Include a brief narrative statement explaining what the item is, how the item is to be used, the military importance and what system and/or items it is replacing.

A. MILITARY JUSTIFICATION

Provide a Statement of Military Justification, such as:

Military Justification

"X" Aircraft

The "X" aircraft is a supersonic, two engine, two seat, all weather carrier-based fighter aircraft designed to operate from the _____ and the _____ class carriers. The "X" aircraft is equipped for in-flight refueling and fuel jettisoning. This aircraft is the only currently programmed high-performance

Figure 8-1b. Information Required for BRICK-BAT and CUE-CAP Nominations.

aircraft that is effective against the air breathing air threat at remote ranges (outside of the missile release lines). Without this aircraft, the Navy's Fleet Air Defense will be below the acceptable limit. Operational requirement number AD-100000-Z of December 31, 1990, priority 1A, applies. The "X" aircraft is the most effective carrier-based fighter aircraft weapon system capable of intercepting and destroying multiple enemy attack aircraft in all conditions of weather and visibility at high and low altitudes.

B. PRODUCTION RESOURCE JUSTIFICATION FOR BRICK-BAT AND CUE-CAP NOMINATIONS

Provide a Statement of Production Resource Justification that includes:

1. Estimated cost, such as:

This Program is estimated to cost * approximately \$ _____ million (\$ _____ million for facilities construction) for X number aircraft. Of the total cost, approximately \$ _____ million is estimated to be for critical components and materials needing special attention and expediting action to meet the established schedule.

*Total value of items above, not to exceed \$ _____ million.

2. Identify critical potential production bottleneck components and their suppliers that are anticipated to need special attention to support the Program schedule and/or surge production rates in a crisis, such as:

- a. Special test equipment
Hewlett-Packard, Palo Alto, CA.
 - (1) Recording oscillographs.
 - (2) Galvanometers.
 - (3) Linear and angular accelerometers.

- b. Electronic components.
 - (1) Tubes
TI, Dallas, TX.
 - (2) Transistors
National Semiconductor, San Jose, CA.

- c. Special hydraulic pumps, motors, and valves,
Cleveland Pneumatics, Cleveland, OH.

3. Identify anticipated critical and/or strategic * materiel shortages for either the end item or components involved; such as

Figure 8-1b. Information Required for BRICK-BAT and CUE-CAP Nominations, continued

a. Small mill-runs for nonstandard, heat-resisting, high-temperature steels, and other alloys (extrusions, sheets, and forgings) for wings.

b. Monel "K" metal for wing parts (200 pounds, including scrap, required to produce one aircraft).

c. Cobalt for tail section (487 pounds, including scrap, required to produce one aircraft).

*Total value of items above, not to exceed \$ _____ million.

4. Identify anticipated shortages of special production equipment that will require priority assistance, such as a Five Axis grinder, Cincinnati Milicron, Columbus, OH.

5. Describe actions being taken or needed to meet Program schedules, such as;

The Department of the Navy is taking all necessary actions to expedite these items in order to meet the December 31, 1992 target date. Placement of contracts and purchase orders is 30 percent completed. Six special priorities assistance requests (BXA Form 999) were processed through December 31, 1990; four for critical components (\$20,000) and two for materials (\$10,000) provide details of these cases. Since the normal schedule of 6 years is to be compressed into approximately 4 years, this project should be included in the BRICK-BAT category to ensure expeditious handling of future difficulties, as outlined above, at the expense of all CUE-CAP and lower rated items when conflicts occur.

6. Identify major single (S) and sole source (SS) producers and locations, such as:

a. TFX Engines, GE, Evandale, OH (S)

b. Landing Gear, Cleveland Pneumatic, Akron, OH (SS).

7. Identify surge potential and MINIMUM time for completion under peacetime (assume no waivers for laws, regulations, etc.), such as:

a. End Item: Minimum surge potential; decreasing from 32 to 16 months for aircraft.

b. Major components: Engines; good surge potential; decreasing from 24 to 10 months with rolling inventory.

Figure 8-1b. Information Required for BRICK-BAT and CUE-CAP Nominations, continued

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SUBCHAPTER A—NATIONAL SECURITY INDUSTRIAL BASE REGULATIONS

PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

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- 700.10 Delegation of authority.
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~~SCHEDULE IV TO PART 700—COPPER CON- TROLLED MATERIALS PRODUCERS' SET- ASIDE BASE AND PERCENTAGES~~

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~~APPENDIX II TO PART 700—INTERAGENCY MEMORANDA OF UNDERSTANDING~~

APPENDIX III TO PART 700—FORM ITA-999; RE- QUEST FOR SPECIAL PRIORITIES ASSIST- ANCE

APPENDIX IV TO PART 700—MEMORANDUM OF UNDERSTANDING ON PRIORITIES AND ALLO- CATIONS SUPPORT BETWEEN THE U.S. DE- PARTMENT OF COMMERCE AND THE CANA- DIAN DEPARTMENT OF SUPPLY AND SERV- ICES

AUTHORITY: Secs. 101-103, 701-707, 709, and
713, Defense Production Act of 1950 (Pub. L.
81-774, 64 Stat. 798,) as amended (50 U.S.C.

app. 2071-2073, 2151-2157, 2159, and 2163); E.O. 10480, 3 CFR 1949-53 Comp. p. 962, as amended; E.O. 12148, 3 CFR 1979 Comp. p. 412, as amended; Defense Mobilization Order (DMO) 3, 44 CFR part 322; DMO-12, 44 CFR part 329; DMO-13, 44 CFR part 330, 50 U.S.C. 486, 10 U.S.C. 4501 and 9501, 50 U.S.C. 82, and Executive Order 12742 of January 8, 1991, 56 FR 1079.

SOURCE: 49 FR 30414, July 30, 1984, unless otherwise noted. Redesignated at 54 FR 601, Jan. 9, 1989.

Subpart A—Purpose

§ 700.1 Purpose of this regulation.

(a) Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*) (Defense Production Act), authorizes the President: to require the priority performance of contracts and orders necessary or appropriate to promote the national defense over other contracts or orders; to allocate materials and facilities as necessary or appropriate to promote the national defense; and to require the allocation of, or the priority performance under contracts or orders relating to, supplies of materials and equipment in order to assure domestic energy supplies for national defense needs.

(b) This regulation consolidates, simplifies, and revises the Defense Materials System and the Defense Priorities System regulations, directions, and orders. The Defense Priorities and Allocations System (DPAS) helps to keep current national defense programs on schedule and provides an operating system that can be rapidly expanded in a national emergency.

(c) To aid in understanding and using the DPAS, an overview of its major provisions is incorporated into this regulation as subpart B—Overview. The full text of the DPAS is found in subparts D through L.

Subpart B—Overview

§ 700.2 Introduction.

(a) The Federal Emergency Management Agency authorizes certain national defense programs for priorities and allocations support. For example, military aircraft production, ammunition, and certain programs which maximize domestic energy supplies are “authorized programs.” A complete list of

currently authorized programs is provided at Schedule I.

(b) To ensure the preferential treatment of certain contracts and orders for authorized programs, the Department of Commerce administers the DPAS.

(c) Commerce has delegated authority to place priority ratings on contracts or orders necessary or appropriate to promote the national defense to the government agencies that issue such contracts or orders. Schedule I includes a list of agencies delegated this authority. Copies of the Delegations of Authority are provided at Appendix I. They set forth the authorities delegated and those retained by Commerce.

§ 700.3 Priority ratings and rated orders.

(a) Rated orders are identified by a priority rating consisting of the rating—either DX or DO—and a program identification symbol. Rated orders take preference over all unrated orders as necessary to meet required delivery dates. Among rated orders, DX rated orders take preference over DO rated orders. Program identification symbols indicate which authorized program is involved with the rated order. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. The program identification symbols, in themselves, do not connote any priority.

(b) Persons receiving rated orders must give them preferential treatment as required by this regulation. This means a person must accept and fill a rated order for items that the person normally supplies. The existence of previously accepted unrated or lower rated orders is not sufficient reason for rejecting a rated order. Persons are required to reschedule unrated orders if they conflict with performance against a rated order. Similarly, persons must reschedule DO rated orders if they conflict with performance against a DX rated order.

(c) All rated orders must be scheduled to the extent possible to ensure delivery by the required delivery date.

(d) Persons who receive rated orders must in turn place rated orders with their suppliers for the items they need to fill the orders. This provision en-

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tures that suppliers will give priority treatment to rated orders from contractor to subcontractor to suppliers throughout the procurement chain.

(e) Persons may place a priority rating on orders only when they are in receipt of a rated order, have been explicitly authorized to do so by the Department of Commerce or a Delegate Agency, or are otherwise permitted to do so by this regulation.

\$700.4 Controlled materials.

(a) Federal central management of certain key materials, designated "controlled materials", has been essential in the past to effective industrial mobilizations. Accordingly, special rules are maintained in peacetime to provide an operating mechanism that can be rapidly expanded during a national emergency to meet increased defense and other essential needs. Currently, the controlled materials are steel, copper, aluminum, and nickel alloys.

(b) Under the controlled materials program, the Department of Commerce requires suppliers of controlled materials to accept rated orders up to a specified quantity of material during a given period of time. This quantity is called a "set-aside". This provision ensures that the material will be available when rated orders are placed. In addition, the system ensures that controlled materials producers are treated equitably, for after the set-aside quantity levels have been reached, controlled materials producers may generally reject additional rated orders. These orders would then be filled by other controlled materials producers who had not exhausted their set-aside requirement.

(c) In time of national emergency, the level and scope of the controlled materials program may be greatly expanded to ensure the necessary allocation of materials and in order to direct general industrial activity toward supporting the requirements of the emergency.

(d) Certain other items, in addition to the controlled materials, have critical importance to national defense programs. From time-to-time, special rules, similar to those for controlled

materials, may be needed to manage those materials.

(e) If items become scarce and critical and the requirements of the national defense cannot be met without creating a significant dislocation in the civilian market place so as to create appreciable hardship, special rules may be established under section 101(b) of the Defense Production Act to control the general distribution of such items in the civilian market.

\$700.5 Special priorities assistance.

(a) The DPAS is designed to be largely self-executing. However, from time-to-time production or delivery problems will arise. In this event, special priorities assistance is available from Commerce and from the Delegate Agencies.

(b) Special priorities assistance is available for any reason consistent with this regulation. Generally, special priorities assistance is provided to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information supplied by customers and vendors. Special priorities assistance may also be used to request rating authority for items not automatically ratable.

\$700.6 Official actions.

When necessary, Commerce takes specific official actions to implement or enforce the provisions of this regulation and to provide special priorities assistance. Such actions may include the issuance of: Rating Authorizations, Directives, Letters of Understanding, Set-asides, and compliance documents (Administrative Subpoenas, Demands for Information, and Inspection Authorizations).

\$700.7 Compliance.

(a) Compliance with the provisions of this regulation and official actions is required by the Defense Production Act. Violators are subject to criminal penalties.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

Subpart C—Definitions

§ 700.8 Definitions.

The following definitions pertain to all sections of the regulation:

Authorized program. A program approved by the Federal Emergency Management Agency for priorities and allocations support under the Defense Production Act.

Construction. The erection, addition, extension, or alteration of any building, structure, or project, using materials or products which are to be an integral and permanent part of the building, structure, or project. Construction does not include maintenance and repair.

Controlled materials. The various shapes and forms of steel, copper, aluminum, and nickel alloys, whether new, remelted, rerolled or redrawn, as specified in Schedule II, and as defined in Schedule III.

Controlled materials suppliers. All persons, including producers, distributors, brokers, importers and exporters engaged in the sale or resale of controlled materials.

Delegate Agency. A government agency authorized by delegation from the Department of Commerce to place priority ratings on contracts or orders needed to support authorized programs.

Defense Production Act. the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*).

Distributors of controlled materials. Those persons (including warehouse operators or jobbers, but not retailers) engaged in stocking controlled materials at locations regularly maintained for their sale or resale in the form or shape as received, or after performing such operations as cutting to length or shape, slitting, shearing, or sorting and grading.

Further conversion. The further processing of controlled materials by a processor of such materials.

Item. Any raw, in process, or manufactured material, article, commodity, supply, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

Lead time. The period of time specified in this regulation for the receipt of orders for controlled materials by a

supplier in advance of the first day of the month in which shipment is required.

Maintenance and repair and operating supplies (MRO):

(a) **Maintenance** is the upkeep necessary to continue any plant, facility, or equipment in working condition.

(b) **Repair** is the restoration of any plant, facility, or equipment to working condition when it has been rendered unsafe or unfit for service by wear and tear, damage, or failure of parts.

(c) **Operating supplies** are any items carried as operating supplies according to a person's established accounting practice. Operating supplies may include hand tools and expendable tools, jigs, dies, fixtures used on production equipment, lubricants, cleaners, chemicals and other expendable items.

(d) MRO does not include items produced or obtained for sale to other persons or for installation upon or attachment to the property of another person, or items required for the production of such items; items needed for the replacement of any plant, facility, or equipment; or items for the improvement of any plant, facility, or equipment by replacing items which are still in working condition with items of a new or different kind, quality, or design.

Minimum mill quantity. The minimum quantity of a controlled material that may be obtained from a producer for shipment at any one time to any one destination.

Official action. An action taken by Commerce under the authority of the Defense Production Act and this regulation. Such actions include the issuance of Set-asides, Rating Authorizations, Directives, Letters of Understanding, Demands for Information, Inspection Authorizations, and Administrative Subpoenas.

Person. Any individual, corporation, partnership, association, or any other organized group of persons, and includes any agency of the United States Government or any other government.

Production equipment. Any item of capital equipment used in producing materials or furnishing services that has a unit acquisition cost of \$2,500 or more, an anticipated service life in ex-

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cess of one year, and the potential for maintaining its integrity as a capital item.

Rated order. A prime contract, a sub-contract, or a purchase order in support of an authorized program issued in accordance with the provisions of this regulation.

Set-aside. The amount of an item for which a supplier must reserve order book space in anticipation of the receipt of rated orders.

[49 FR 30414, July 30, 1984; 49 FR 50172, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

Subpart D—Industrial Priorities

§ 700.10 Delegation of authority.

(a) The priorities and allocations authorities given to the President in Title I of the Defense Production Act have been delegated to the Director of the Federal Emergency Management Agency (FEMA), who, in turn, has delegated these authorities with respect to industrial resources to the Secretary of Commerce. FEMA retains the overall policy and coordinating functions for this delegated authority.

(b) Within the Department of Commerce, these responsibilities have been assigned to the Office of Industrial Resource Administration. The Department of Commerce has authorized the Delegate Agencies to assign priority ratings to orders for items needed for authorized programs. Copies of these Delegations of Authority are provided at Appendix I. They set forth the authorities delegated and those retained by Commerce.

§ 700.11 Priority ratings.

(a) *Levels of priority.* (1) There are two levels of priority established by this regulation, identified by the rating symbols "DO" and "DX".

(2) All DO rated orders have equal priority with each other and take preference over unrated orders. All DX rated orders have equal priority with each other and take preference over DO rated orders and unrated orders. (For resolution of conflicts among rated orders of equal priority, see § 700.14(c).)

(3) In addition, a Directive issued by Commerce takes preference over any DX rated order, DO rated order, or

unrated order, as stipulated in the Directive. (For a full discussion of Directives, see § 700.62.)

(b) *Program identification symbols.* Program identification symbols indicate which authorized program is being supported by a rated order. The list of authorized programs and their identification symbols are listed in Schedule I. For example, A1 identifies defense aircraft programs and A7 signifies defense electronic programs. Program identification symbols, in themselves, do not connote any priority.

(c) *Priority ratings.* A priority rating consists of the rating symbol—DO and DX—and the program identification symbol, such as A1, B2, or H6. Thus, a contract for the production of an aircraft will contain a DO-A1 or DX-A1 priority rating. A contract for a radar set will contain a DO-A7 or DX-A7 priority rating.

§ 700.12 Elements of a rated order.

Each rated order must include:

(a) The appropriate priority rating (e.g. DO-A1, DX-A4, DO-H1);

(b) A required delivery date or dates. The words "immediately" or "as soon as possible" do not constitute a delivery date. A "requirements contract" bearing a priority rating may contain no specific delivery date or dates and may provide for the furnishing of items from time-to-time or within a stated period against specific purchase orders or "calls". Such "calls" must specify a required delivery date or dates and are to be considered as rated as of the date of their receipt by the supplier and not as of the date of the original "requirements contract";

(c) The signature of an individual authorized to sign rated orders for the person placing the order. The signature certifies that the rated order is authorized under this regulation and that the requirements of this regulation are being followed; and

(d) A statement that reads in substance:

This is a rated order certified for national defense use, and you are required to follow all the provisions of the Defense Priorities and Allocations System regulation (15 CFR part 700).

§ 700.13 Acceptance and rejection of rated orders.

(a) *Mandatory acceptance.* (1) Except as otherwise specified in this section, a person shall accept every rated order received and must fill such orders regardless of any other rated or unrated orders that have been accepted.

(2) A person shall not discriminate against rated orders in any manner such as by charging higher prices or by imposing different terms and conditions than for comparable unrated orders.

(b) *Mandatory rejection.* Unless otherwise directed by Commerce:

(1) A person shall not accept a rated order for delivery on a specific date if unable to fill the order by that date. However, the person must inform the customer of the earliest date on which delivery can be made and offer to accept the order on the basis of that date. Scheduling conflicts with previously accepted lower rated or unrated orders are not sufficient reason for rejection under this section.

(2) A person shall not accept a DO rated order for delivery on a date which would interfere with delivery of any previously accepted DO or DX rated orders. However, the person must offer to accept the order based on the earliest delivery date otherwise possible.

(3) A person shall not accept a DX rated order for delivery on a date which would interfere with delivery of any previously accepted DX rated orders, but must offer to accept the order based on the earliest delivery date otherwise possible.

(c) *Optional rejection.* Unless otherwise directed by Commerce, rated orders may be rejected in any of the following cases as long as a supplier does not discriminate among customers:

(1) If the person placing the order is unwilling or unable to meet regularly established terms of sale or payment;

(2) If the order is for an item not supplied or for a service not performed;

(3) If the order is for an item produced, acquired, or provided only for the supplier's own use for which no orders have been filled for two years prior to the date of receipt of the rated order. If, however, a supplier has sold some of these items, the supplier is ob-

ligated to accept rated orders up to that quantity or portion of production, whichever is greater, sold within the past two years;

(4) If the person placing the rated order, other than the U.S. Government, makes the item or performs the service being ordered;

(5) If the rated order is for a controlled material in an amount below the minimum mill quantity established in Schedule II, and the person placing the order is not willing to buy the minimum quantity;

(6) If the rated order is for a controlled material and is not received by the controlled materials producer within the time frame specified in Schedule I;

(7) If the applicable set-aside has been reached or would be exceeded by acceptance, except that a DX order must be accepted without regard for such set-aside;

(8) If acceptance of a rated order or performance against a rated order would violate any other regulation, official action, or order of the Department of Commerce issued under the authority of the Defense Production Act [See § 700.75].

(d) *Customer notification requirements.*

(1) A person must accept or reject a rated order in writing within ten working days after receipt of a DO rated order and within five working days after receipt of a DX rated order. The person must give reasons in writing for the rejection.

(2) If a person has accepted a rated order and later discovers that, due to circumstances beyond the person's control, deliveries will be delayed, the person must notify the customer immediately, give the reasons for the delay, and advise of a new shipment date. If notification is given verbally, written confirmation must be provided within five working days.

§ 700.14 Preferential scheduling.

(a) A person must schedule operations, including the acquisition of all needed production items, in a timely manner to satisfy the delivery requirements of each rated order. Modifying production or delivery schedules is necessary only when required delivery

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dates for rated orders cannot otherwise be met.

(b) DO rated orders must be given production preference over unrated orders, if necessary to meet required delivery dates, even if this requires the diversion of items being processed or ready for delivery against unrated orders. Similarly, DX rated orders must be given preference over DO rated orders and unrated orders.

Examples: If a person receives a DO rated order with a delivery date of June 3 and if meeting that date would mean delaying production or delivery of an item for an unrated order, the unrated order must be delayed. If a DX rated order is received calling for delivery on July 15 and a person has a DO rated order requiring delivery on June 2 and operations can be scheduled to meet both deliveries, there is no need to alter production schedules to give any additional preference to the DX rated order.

(c) If a person cannot fill all the rated orders of equal priority status received on the same day, the person must accept those orders which can be filled which have the earliest delivery dates. For example, the person must accept order A requiring delivery on December 15 before accepting order B requiring delivery on December 31. For those orders which cannot be filled on time, the supplier must inform the customer within the time limits set forth in § 700.13(d), of the earliest date on which delivery can be made and offer to accept the order on the basis of that date.

(d) If a person is unable to purchase needed production items in time to fill a rated order by its required delivery date, the person must fill the rated order by using inventoried production items. A person who uses inventoried items to fill a rated order may replace those items with the use of a rated order as provided in § 700.17(b).

§ 700.15 Extension of priority ratings.

(a) A person must use rated orders with suppliers to obtain items needed to fill a rated order. The person must use the priority rating indicated on the customer's rated order, except as otherwise provided in this regulation or as directed by the Department of Commerce.

For example, if a person is in receipt of a DO-A3 rated order for a navigation system and needs to purchase semiconductors for its manufacture, that person must use a DO-A3 rated order to obtain the needed semiconductors.

(b) The priority rating must be included on each successive order placed to obtain items needed to fill a customer's rated order. This continues from contractor to subcontractor to supplier throughout the entire procurement chain.

§ 700.16 Changes or cancellations of priority ratings and rated orders.

(a) The priority rating on a rated order may be changed or cancelled by:

(1) An official action of the Department of Commerce; or

(2) Written notification from the person who placed the rated order (including a Delegate Agency).

(b) If an unrated order is amended so as to make it a rated order, or a DO, rating is changed to a DX rating, the supplier must give the appropriate preferential treatment to the order as of the date the change is received by the supplier.

(c) An amendment to a rated order that significantly alters a supplier's original production or delivery schedule shall constitute a new rated order as of the date of its receipt. The supplier must accept or reject the amended order according to the provisions of § 700.13.

(d) The following amendments do not constitute a new rated order: a change in shipping destination; a reduction in the total amount of the order; an increase in the total amount of the order which has negligible impact upon deliveries; a minor variation in size or design; or a change which is agreed upon between the supplier and the customer.

(e) If a person no longer needs items to fill a rated order, any rated orders placed with suppliers for the items, or the priority rating on those orders, must be cancelled.

(f) When a priority rating is added to an unrated order, or is changed or cancelled, all suppliers must be promptly notified in writing.

§700.17 Use of rated orders.

(a) A person must use rated orders to obtain:

(1) Items which will be physically incorporated into other items to fill rated orders, including that portion of such items normally consumed, or converted into scrap or by-products, in the course of processing;

(2) Containers or other packaging materials required to make delivery of the finished items against rated orders;

(3) Services, other than contracts of employment, needed to fill rated orders; and

(4) MRO needed to produce the finished items to fill rated orders. However, for MRO, the priority rating used must contain the program identification symbol H7 along with the rating symbol contained on the customer's rated order. For example, a person in receipt of a DO-A3 rated order, who needs MRO, would place a DO-H7 rated order with the person's supplier.

(b) A person may use a rated order to replace inventoried items (including finished items) if such items were used to fill rated orders, as follows:

(1) The order must be placed within 90 days of the date of use of the inventory.

(2) A DO rating symbol and the program identification symbol indicated on the customer's rated order must be used on the order (except as provided in §700.31(d)—Controlled materials program identification symbols). A DX rating symbol may not be used even if the inventory was used to fill a DX rated order.

(3) If the priority ratings on rated orders from one customer or several customers contain different program identification symbols, the rated orders may be combined. In this case, the program identification symbol H1 must be used (i.e., DO-H1) (not applicable to controlled materials producers).

(c) A person may combine DX and DO rated orders from one customer or several customers if the items covered by each level of priority are identified separately and clearly. If different program identification symbols are indicated on those rated orders of equal priority, the person must use the program identification symbol H1 (i.e., DO-H1 or DX-H1), except as provided in

§700.31(d) (Controlled materials program identification symbols).

(d) *Combining rated and unrated orders.* (1) A person may combine rated and unrated orders provided that the rated quantities are identified separately and are also contained in a separate rated order which conforms to the requirements of §700.12 (Elements of a rated order). In addition to identifying clearly the rated quantities, the combined purchase order must contain a statement that the rated quantities are contained in a separate rated order placed in accordance with this regulation. Wherever possible, the separate rated order must be physically attached to the combined purchase order. A supplier must give preferential treatment to the rated quantities of the combined order, if necessary. A supplier may not use the authorities of this regulation to give preferential treatment to the unrated portion.

(2) Any supplier who believes that rated and unrated orders are being combined in a manner contrary to the intent of this regulation or in a fashion that causes undue or exceptional hardship may submit a request for adjustment or exception under §700.80.

(e) A person may place a rated order for the minimum commercially procurable quantity even if the quantity needed to fill a rated order is less than that minimum. However, a person must combine rated orders as provided in paragraph (c) of this section, if possible, to obtain minimum procurable quantities.

(f) A person is not required to place a priority rating on an order for less than \$5,000 provided that delivery can be obtained in a timely fashion without the use of the priority rating.

§700.18 Limitations on placing rated orders.

(a) *General limitations.* (1) A person may not place a DO or DX rated order unless entitled to do so under this regulation.

(2) Rated orders may not be used to obtain:

(i) Delivery on a date earlier than needed;

(ii) A greater quantity of the item than needed, except to obtain a minimum procurable quantity. Separate

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rated orders may not be placed solely for the purpose of obtaining minimum procurable quantities on each order;

(iii) Items in advance of the receipt of a rated order, *except* as specifically authorized by Commerce (see § 700.51(c) for information on obtaining authorization for a priority rating in advance of a rated order); or

(iv) Any of the following items unless specific priority rating authority has been obtained from a Delegate Agency or Commerce:

(A) Items for plant improvement, expansion or construction, unless they will be physically incorporated into a construction project covered by a rated order; and

(B) Production or construction equipment or items to be used for the manufacture of production equipment. [For information on requesting priority rating authority, see § 700.53.]

(b) *Jurisdictional limitations.* (1) The priorities and allocations authority for certain items has been delegated under Executive Order 10480, as amended, to other agencies, and, thus, the provisions of this regulation are not applicable to them. These items include:

(i) Petroleum, gas, solid fuel, and electric power and all other forms of energy (Department of Energy);

(ii) Food and the domestic distribution of farm equipment and commercial fertilizer (Department of Agriculture);

(iii) Civil transportation and the movement of persons and property by all modes (Department of Transportation);

(iv) Minerals (Department of the Interior);

(v) Water (Department of Defense—U.S. Army Corps of Engineers);

(vi) Housing facilities (Department of Housing and Urban Development);

(vii) Health facilities (Department of Health and Human Services); and

(viii) Radioisotopes, stable isotopes, source material, and special nuclear material, produced in Government-owned plants or facilities operated by or for Department of Energy (Department of Energy).

(2) The jurisdiction of the Department of Commerce and the Departments of Energy, Agriculture, and the Interior over certain specific items in-

cluded in the categories listed above has been clarified by Interagency Memoranda of Understanding. Copies of these Memoranda are provided for information at Appendix II.

(3) The following items under the jurisdiction of Commerce are currently excluded from the rating provisions of this regulation; however, these items are subject to Commerce Directives. These excluded items are:

Communication services
Copper raw materials (as defined in Schedule III)
Crushed stone
Gravel
Sand
Scrap
Slag
Steam heat, central
Waste paper

Subpart E—Industrial Priorities for Energy Programs

§ 700.20 Use of priority ratings.

(a) Section 101(c) of the Defense Production Act authorizes the use of priority ratings for projects which maximize domestic energy supplies.

(b) Projects which maximize domestic energy supplies include those which maintain or further domestic energy exploration, production, refining, and transportation; maintain or further the conservation of energy; or are involved in the construction or maintenance of energy facilities.

§ 700.21 Application for priority rating authority.

(a) For projects believed to maximize domestic energy supplies, a person may request priority rating authority for scarce, critical and essential supplies of materials and equipment by submitting DOE Form PR 437 to the Department of Energy. Blank applications and further information may be obtained from the Technical Information Center, Department of Energy, P.O. Box 62, Oak Ridge, Tennessee 37830, or from the Procurement and Assistance Management Directorate, Department of Energy, Attn: MA 932, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

(b) On receipt of the application, the Department of Energy will:

(1) Determine if the project maximizes domestic energy supplies; and

(2) Find whether the materials or equipment involved in the application are critical and essential to the project.

(c) If the Department of Energy notifies Commerce that the project maximizes domestic energy supplies and that the materials or equipment are critical and essential, Commerce must find whether the items in question are scarce and whether there is a need to use the priorities and allocations authorities.

(1) Scarcity implies an unusual difficulty in obtaining the material or equipment in a timeframe consistent with the timely completion of the energy project. Among the factors to be used in making the scarcity finding will be the following:

(i) Value and volume of material or equipment shipments;

(ii) Consumption of material and equipment;

(iii) Volume and market trends of imports and exports;

(iv) Domestic and foreign sources of supply;

(v) Normal levels of inventories;

(vi) Rates of capacity utilization;

(vii) Volume of new orders; and

(viii) Lead times for new orders.

(2) In finding whether there is a need to use the priorities and allocations authorities, Commerce will consider alternative supply solutions and other measures.

(d) If Commerce does not find that the items of material or equipment are scarce, it will not proceed to analyze the need to use the priorities and allocations authorities.

(e) Commerce will inform the Department of Energy of the results of its analysis. If Commerce has made the two required findings, it will authorize the Department of Energy to grant the use of a priority rating to the applicant.

(f) Schedule I includes a list of authorized programs to support the maximization of domestic energy supplies. A Department of Energy regulation setting forth the procedures and criteria used by the Department of Energy in making its determination and findings is published in 10 CFR part 216.

~~Subpart F—The Controlled Materials~~

~~§ 700.30 Management of the controlled materials.~~

(a) The controlled materials are steel, copper, aluminum, and nickel alloys in the shapes and forms listed in Schedule II and defined in Schedule III. These materials are basic industrial resources necessary for both authorized defense programs and for general industrial activity. Federal management of these four materials assures the timely availability of the materials to meet current authorized program requirements; assures the equitable distribution of requirements among the suppliers of the materials; and provides a flexible and expandable system capable of directing general economic and industrial activity during times of emergency.

(b) Before controlled materials can be used for authorized programs, the Delegate Agencies must obtain specific approval, known as an allotment, from the Federal Emergency Management Agency (FEMA). Accordingly, the Delegate Agencies submit to FEMA requirements for the controlled materials necessary to support their authorized programs. After reviewing the available supply of the materials and other national security, economic and policy considerations, FEMA approves the use of specific quantities of controlled materials by issuing allotments to each Delegate Agency. (Special controlled materials provisions applicable to the Delegate Agencies are found in the Delegations of Authority and the U.S.-Canadian Memorandum of Understanding appended to this regulation.)

(c) To assure the timely availability of controlled materials, the Department of Commerce manages their supply and distribution by requiring producers and distributors of controlled materials to set aside or reserve space in their order books for the receipt of rated orders. This process is described in greater detail in the following section.

~~§ 700.31 Specific rules for controlled materials suppliers and users.~~

~~(a) Rated orders. Rated orders are used to obtain controlled materials.~~

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(2) A controlled materials producer must use the program identification symbol H3 on rated orders to obtain controlled materials for further conversion needed for production or inventory replacement.

(3) A controlled materials distributor must use the program identification symbol H4 on rated orders to obtain controlled materials needed to fill rated orders, or to replace in inventory, controlled materials used to fill rated orders.

(e) *Controlled materials shipments and requirements data.* (1) Controlled materials producers and distributors are required to maintain and submit to Commerce upon request, data on shipments against rated and unrated orders and on related activities [OMB Nos. 0625-0107 (Recordkeeping), 0625-0011 (Copper), 0625-0016 (Aluminum), 0625-0017 (Steel), and 0625-0021 (Nickel Alloys)].

(2) Persons performing against rated orders must provide, upon request of the appropriate Delegate Agency or the prime contractor, data on requirements for controlled materials needed to fill rated contracts for items manufactured to authorized program specifications or used in construction for authorized programs [OMB Nos. 0625-0107 (Recordkeeping) and 0625-0013 (Controlled Materials Requirements—Production, Construction, or Research and Development)]. Prime contractors may request this information from their subcontractors only when needed to satisfy a request for requirements data from a Delegate Agency.

Subpart G—Critical Items

§ 700.40 General provisions.

(a) From time-to-time Commerce may determine that certain items have a critical importance to industrial production with respect to the national defense and authorized programs. Special rules for such items are set forth in this subpart.

(b) Commerce may establish special rules as needed to ensure that critical items are available to authorized programs in a timely fashion and to provide for an equitable and orderly distribution of requirements for such items among all suppliers of the items.

§ 700.41 Metalworking machines.

(a) "Metalworking machines" include power driven, manual or automatic, metal cutting and metal forming machines and complete machines not supported in the hands of an operator when in use. Basic machines with a list price of \$2,500 or less are not covered by this section.

(b) Metalworking machines covered by this section include:

Bending and forming machines
Boring machines
Broaching machines
Drilling and tapping machines
Electrical discharge, ultrasonic and chemical erosion machines
Forging machinery and hammers
Gear cutting and finishing machines
Grinding machines
Hydraulic and pneumatic presses, power driven
Machining centers and way-type machines
Manual presses
Mechanical presses, power driven
Milling machines
Miscellaneous machine tools
Miscellaneous secondary metal forming and cutting machines
Planers and shapers
Polishing, lapping, boring, and finishing machines
Punching and shearing machines
Riveting machines
Saws and filing machines
Turning machines, lathes, including automatic
Wire and metal ribbon forming machines

(c) A metalworking machine producer is not required to accept DO rated orders calling for delivery in any month of a total quantity of any size of machine in excess of 60 percent of scheduled production of that size of machine for that month, or any DO rated orders received less than three months prior to the beginning of the month for which delivery is requested. However, DX rated orders must be accepted without regard to a set-aside or the lead time, if delivery can be made by the required date.

Subpart H—Special Priorities Assistance

§ 700.50 General provisions.

(a) The DPAS is designed to be largely self-executing. However, it is anticipated that from time-to-time problems will occur. In this event, a person

should immediately contact the appropriate contract administration officer for guidance or assistance. If additional formal aid is needed, special priorities assistance should be sought from the Delegate Agency through the contract administration officer. If the Delegate Agency is unable to resolve the problem or to authorize the use of a priority rating and believes additional assistance is warranted, the Delegate Agency may forward the request to the Department of Commerce for action. Special priorities assistance is a service provided to alleviate problems that do arise.

(b) Special priorities assistance can be provided for any reason in support of this regulation, such as assisting in obtaining timely deliveries of items needed to satisfy rated orders or authorizing the use of priority ratings on orders to obtain items not automatically ratable under this regulation.

(c) A request for special priorities assistance or priority rating authority must be submitted on Form ITA-999 (OMB control number 0625-0015) to the local contract administration representative. Form ITA-999 may be obtained from the Delegate Agency representative, any Commerce District Office, or from the Department of Commerce. A sample Form ITA-999 is attached at Appendix III.

[49 FR 30414, July 30, 1984; 49 FR 50171, Dec. 27, 1984. Redesignated at 54 FR 601, Jan. 9, 1989]

§ 700.51 Requests for priority rating authority.

(a) If a rated order is likely to be delayed because a person is unable to obtain items not normally rated under this regulation, the person may request the authority to use a priority rating in ordering the needed items. Examples of items for which priority ratings can be authorized include:

- (1) Production or construction equipment;
- (2) Computers when not used as production items; and
- (3) Expansion, rebuilding or replacing plant facilities.

(b) *Rating authority for production or construction equipment.* (1) A request for priority rating authority for production or construction equipment must

be submitted to the appropriate Delegate Agency. The Delegate Agency may establish particular forms to be used for these requests (e.g., Department of Defense Form DD 691.)

(2) When the use of a priority rating is authorized for the procurement of production or construction equipment, a rated order may be used either to purchase or to lease such equipment. However, in the latter case, the equipment may be leased only from a person engaged in the business of leasing such equipment or from a person willing to lease rather than sell.

(c) *Rating authority in advance of a rated prime contract.* (1) In certain cases and upon specific request, Commerce, in order to promote the national defense, may authorize a person to place a priority rating on an order to a supplier in advance of the issuance of a rated prime contract. In these instances, the person requesting advance rating authority must obtain sponsorship of the request from the appropriate Delegate Agency. The person shall also assume any business risk associated with the placing of rated orders if these orders have to be cancelled in the event the rated prime contract is not issued.

(2) The person must state the following in the request:

It is understood that the authorization of a priority rating in advance of our receiving a rated prime contract from a Delegate Agency and our use of that priority rating with our suppliers in no way commits the Delegate Agency, the Department of Commerce or any other government agency to enter into a contract or order or to expend funds. Further, we understand that the Federal Government shall not be liable for any cancellation charges, termination costs, or other damages that may accrue if a rated prime contract is not eventually placed and, as a result, we must subsequently cancel orders placed with the use of the priority rating authorized as a result of this request.

(3) In reviewing requests for rating authority in advance of a rated prime contract, Commerce will consider, among other things, the following criteria:

- (i) The probability that the prime contract will be awarded;
- (ii) The impact of the resulting rated orders on suppliers and on other authorized programs;

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(iii) Whether the contractor is the sole source;

(iv) Whether the item being produced has a long lead time;

(v) The political sensitivity of the project; and

(vi) The time period for which the rating is being requested.

(4) Commerce may require periodic reports on the use of the rating authority granted under paragraph (c) of this section.

(5) If a rated prime contract is not issued, the person shall promptly notify all suppliers who have received rated orders pursuant to the advanced rating authority that the priority rating on those orders is cancelled.

§ 700.52 Examples of assistance.

(a) While special priorities assistance may be provided for any reason in support of this regulation, it is usually provided in situations where:

(1) A person is experiencing difficulty in obtaining delivery against a rated order by the required delivery date; or

(2) A person cannot locate a supplier for an item needed to fill a rated order.

(b) Other examples of special priorities assistance include:

(1) Ensuring that rated orders receive preferential treatment by suppliers;

(2) Resolving production or delivery conflicts between various rated orders;

(3) Assisting in placing rated orders with suppliers;

(4) Verifying the urgency of rated orders; and

(5) Determining the validity of rated orders.

§ 700.53 Criteria for assistance.

Requests for special priorities assistance should be timely, i.e., the request has been submitted promptly and enough time exists for the Delegate Agency or Commerce to effect a meaningful resolution to the problem, and must establish that:

(a) There is an urgent need for the item; and

(b) The applicant has made a reasonable effort to resolve the problem.

§ 700.54 Instances where assistance will not be provided.

Special priorities assistance is provided at the discretion of the Delegate

Agencies and Commerce when it is determined that such assistance is warranted to meet the objectives of this regulation. Examples where assistance will not be provided include situations when a person is attempting to:

(a) Secure a price advantage;

(b) Obtain delivery prior to the time required to fill a rated order;

(c) Gain competitive advantage;

(d) Disrupt an industry apportionment program in a manner designed to provide a person with an unwarranted share of scarce items; or

(e) Overcome a supplier's regularly established terms of sale or conditions of doing business.

§ 700.55 Assistance programs with Canada and other nations.

(a) To promote military assistance to foreign nations, this section provides for authorizing priority ratings to persons in Canada and in other foreign nations to obtain items in the United States in support of authorized programs. Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada.

(b) *Canada.* (1) The joint U.S.-Canadian military arrangements for the defense of North America and the integrated nature of their defense industries as set forth in the *U.S.-Canadian Statement of Principles for Economic Cooperation* (October 26, 1950) require close coordination and the establishment of a means to provide mutual assistance to the defense industries located in both countries.

(2) The Department of Commerce coordinates with the Canadian Department of Supply and Services on all matters of mutual concern relating to the administration of this regulation. A copy of the Memorandum of Understanding between the two departments is provided at appendix IV.

(3) Any person in the United States ordering defense items in Canada should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the

supplier's vendor to fill the order, they should contact the Canadian Department of Supply and Services for authority to place rated orders in the United States.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Department of Supply and Services in accordance with procedures specified by that Department.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply for such assistance to the Canadian Department of Supply and Services. The Department of Supply and Services will forward appropriate requests to Commerce.

(6) Any person in the United States requiring assistance in obtaining items in Canada must submit a request through the Delegate Agency to Commerce on Form ITA-999. Commerce will forward appropriate requests to the Canadian Department of Supply and Services.

(c) *Foreign nations.* (1) Any person in a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should apply for such assistance or rating authority to the U.S. Department of Defense. The request must be sponsored by the government of the foreign nation prior to its submission.

(2) If the Department of Defense endorses the request, it will be forwarded to Commerce for appropriate action.

Subpart I—Official Actions

§700.60 General provisions.

(a) Commerce may, from time-to-time, take specific official actions to implement or enforce the provisions of this regulation.

(b) Several of these official actions (Rating Authorizations, Directives, and Letters of Understanding) are discussed in this subpart. Other official actions which pertain to compliance (Administrative Subpoenas, Demands for Information, and Inspection Authorizations) are discussed in §700.71(b).

§700.61 Rating Authorizations.

(a) A Rating Authorization is an official action granting specific priority rating authority that:

(1) Permits a person to place a priority rating on an order for an item not normally ratable under this regulation; or

(2) Authorizes a person to modify a priority rating on a specific order or series of contracts or orders.

(b) To request priority rating authority, see §700.51.

§700.62 Directives.

(a) A Directive is an official action which requires a person to take or refrain from taking certain actions in accordance with its provisions.

(b) A person must comply with each Directive issued. However, a person may not use or extend a Directive to obtain any items from a supplier, unless expressly authorized to do so in the Directive.

(c) Directives take precedence over all DX rated orders, DO rated orders, and unrated orders previously or subsequently received, unless a contrary instruction appears in the Directive.

§700.63 Letters of Understanding.

(a) A Letter of Understanding is an official action which may be issued in resolving special priorities assistance cases to reflect an agreement reached by all parties (Commerce, the Delegate Agency, the supplier, and the customer).

(b) A Letter of Understanding is not used to alter scheduling between rated orders, to authorize the use of priority ratings, to impose restrictions under this regulation, or to take other official actions. Rather, Letters of Understanding are used to confirm production or shipping schedules which do not require modifications to other rated orders.

Subpart J—Compliance

§700.70 General provisions.

(a) Compliance actions may be taken for any reason necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or an official action.

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Such actions include audits, investigations, or other inquiries.

(b) Any person who places or receives a rated order should be thoroughly familiar with, and must comply with, the provisions of this regulation.

(c) Willful violation of any of the provisions of Title I or section 705 of the Defense Production Act, this regulation, or an official action of the Department of Commerce, is a criminal act, punishable as provided in the Defense Production Act and as set forth in § 700.74 of this regulation.

§ 700.71 Audits and investigations.

(a) Audits and investigations are official examinations of books, records, documents, other writings and information to ensure that the provisions of the Defense Production Act, this regulation, and official actions have been properly followed. An audit or investigation may also include interviews and a systems evaluation to detect problems or failures in the implementation of this regulation.

(b) When undertaking an audit, investigation, or other inquiry, the Department of Commerce shall:

(1) Define the scope and purpose in the official action given to the person under investigation, and

(2) Have ascertained that the information sought or other adequate and authoritative data are not available from any Federal or other responsible agency.

(c) In administering this regulation, Commerce may issue the following documents which constitute official actions:

(1) *Administrative Subpoenas.* An Administrative Subpoena requires a person to appear as a witness before an official designated by the Department of Commerce to testify under oath on matters of which that person has knowledge relating to the enforcement or the administration of the Defense Production Act, this regulation, or official actions. An Administrative Subpoena may also require the production of books, papers, records, documents and physical objects or property.

(2) *Demand for Information.* A Demand for Information requires a person to furnish to a duly authorized representative of the Department of Commerce

any information necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or official actions.

(3) *Inspection Authorizations.* An Inspection Authorization requires a person to permit a duly authorized representative of Commerce to interview the person's employees or agents, to inspect books, records, documents, other writings and information in the person's possession or control at the place where that person usually keeps them, and to inspect a person's property when such interviews and inspections are necessary or appropriate to the enforcement or the administration of the Defense Production Act, this regulation, or official actions.

(d) The production of books, records, documents, other writings and information will not be required at any place other than where they are usually kept if, prior to the return date specified in the Administrative Subpoena or Demand for Information, a duly authorized official of Commerce is furnished with copies of such material that are certified under oath to be true copies. As an alternative, a person may enter into a stipulation with a duly authorized official of Commerce as to the content of the material.

(e) An Administrative Subpoena, Demand for Information, or Inspection Authorization, shall include the name, title or official position of the person to be served, the evidence sought to be adduced, and its general relevance to the scope and purpose of the audit, investigation, or other inquiry. If employees or agents are to be interviewed; if books, records, documents, other writings, or information are to be produced; or if property is to be inspected; the Administrative Subpoena, Demand for Information, or Inspection Authorization will describe them with particularity.

(f) Service of documents shall be made in the following manner:

(1) Service of a Demand for Information or Inspection Authorization shall be made personally, or by Certified Mail—Return Receipt Requested at the person's last known address. Service of an Administrative Subpoena shall be made personally. Personal service may also be made by leaving a copy of the

document with someone of suitable age and discretion at the person's last known dwelling or place of business.

(2) Service upon other than an individual may be made by serving a partner, corporate officer, or a managing or general agent authorized by appointment or by law to accept service of process. If an agent is served, a copy of the document shall be mailed to the person named in the document.

(3) Any individual 18 years of age or over may serve an Administrative Subpoena, Demand for Information, or Inspection Authorization. When personal service is made, the individual making the service shall prepare an affidavit as to the manner in which service was made and the identity of the person served, and return the affidavit, and in the case of subpoenas, the original document, to the issuing officer. In case of failure to make service, the reasons for the failure shall be stated on the original document.

§ 700.72 Compulsory process.

(a) If a person refuses to permit a duly authorized representative of Commerce to have access to any premises or source of information necessary to the administration or the enforcement of the Defense Production Act, this regulation, or official actions, the Commerce representative may seek compulsory process. Compulsory process means the institution of appropriate legal action, including *ex parte* application for an inspection warrant or its equivalent, in any forum of appropriate jurisdiction.

(b) Compulsory process may be sought in advance of an audit, investigation, or other inquiry, if, in the judgment of the Director of the Office of Industrial Resource Administration, U.S. Department of Commerce, in consultation with the Assistant General Counsel for International Trade, U.S. Department of Commerce, there is reason to believe that a person will refuse to permit an audit, investigation, or other inquiry, or that other circumstances exist which make such process desirable or necessary.

§ 700.73 Notification of failure to comply.

(a) At the conclusion of an audit, investigation, or other inquiry, or at any other time, Commerce may inform the person in writing where compliance with the requirements of the Defense Production Act, this regulation, or an official action were not met.

(b) In cases where Commerce determines that failure to comply with the provisions of the Defense Production Act, this regulation, or an official action was inadvertent, the person may be informed in writing of the particulars involved and the corrective action to be taken. Failure to take corrective action may then be construed as a willful violation of the Defense Production Act, this regulation, or an official action.

§ 700.74 Violations, penalties, and remedies.

(a) Willful violation of the provisions of Title I or sections 705 or 707 of the Defense Production Act, this regulation, or an official action is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. Except as provided in (b) below, the maximum penalties provided by the Defense Production Act are a \$10,000 fine, or one year in prison, or both.

(b) Willful refusal to furnish any information or reports required by Commerce under section 705 of the Defense Production Act, this regulation, or an official action, is a crime and upon conviction, a person may be punished by fine or imprisonment, or both. Maximum penalties provided by the Defense Production Act are a \$1,000 fine, or one year in prison, or both.

(c) The government may also seek an injunction from a court of appropriate jurisdiction to prohibit the continuance of any violation of, or to enforce compliance with, the Defense Production Act, this regulation, or an official action.

(d) In order to secure the effective enforcement of the Defense Production Act, this regulation, and official actions, the following are prohibited (see section 704 of the Defense Production

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Act; see also, for example, sections 2 and 371 of Title 18, United States Code):

(1) No person may solicit, influence or permit another person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(2) No person may conspire or act in concert with any other person to perform any act prohibited by, or to omit any act required by, the Defense Production Act, this regulation, or an official action.

(3) No person shall deliver any item if the person knows or has reason to believe that the item will be accepted, redelivered, held, or used in violation of the Defense Production Act, this regulation, or an official action. In such instances, the person must immediately notify the Department of Commerce that, in accordance with this provision, delivery has not been made.

§ 700.75 Compliance conflicts.

If compliance with any provision of the Defense Production Act, this regulation, or an official action would prevent a person from filling a rated order or from complying with another provision of the Defense Production Act, this regulation, or an official action, the person must immediately notify the Department of Commerce for resolution of the conflict.

Subpart K—Adjustments, Exceptions, and Appeals

§ 700.80 Adjustments or exceptions.

(a) A person may submit a request to the Office of Industrial Resource Administration, U.S. Department of Commerce, for an adjustment or exception on the ground that:

(1) A provision of this regulation or an official action results in an undue or exceptional hardship on that person not suffered generally by others in similar situations and circumstances; or

(2) The consequence of following a provision of this regulation or an official action is contrary to the intent of the Defense Production Act or this regulation.

(b) Each request for adjustment or exception must be in writing and con-

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tain a complete statement of all the facts and circumstances related to the provision of this regulation or official action from which adjustment is sought and a full and precise statement of the reasons why relief should be provided.

(c) The submission of a request for adjustment or exception shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the request is being considered unless such interim relief is granted in writing by the Office of Industrial Resource Administration.

(d) A decision of the Office of Industrial Resource Administration under this section may be appealed to the Assistant Secretary for Trade Administration, U.S. Department of Commerce. (For information on the appeal procedure, see § 700.81.)

§ 700.81 Appeals.

(a) Any person who has had a request for adjustment or exception denied by the Office of Industrial Resource Administration under § 700.80, may appeal to the Assistant Secretary for Trade Administration, U.S. Department of Commerce, who shall review and reconsider the denial.

(b) An appeal must be received by the Office of the Assistant Secretary for Trade Administration, International Trade Administration, U.S. Department of Commerce, Washington, D. C. 20230, Ref: DPAS, no later than 45 days after receipt of a written notice of denial from the Office of Industrial Resource Administration. After this 45-day period, an appeal may be accepted at the discretion of the Assistant Secretary for Trade Administration for good cause shown.

(c) Each appeal must be in writing and contain a complete statement of all the facts and circumstances related to the action appealed from and a full and precise statement of the reasons the decision should be modified or reversed.

(d) In addition to the written materials submitted in support of an appeal, an appellant may request, in writing, an opportunity for an informal hearing. This request may be granted or de-

nied at the discretion of the Assistant Secretary for Trade Administration.

(e) When a hearing is granted, the Assistant Secretary for Trade Administration may designate an employee of the Department of Commerce to conduct the hearing and to prepare a report. The hearing officer shall determine all procedural questions and impose such time or other limitations deemed reasonable. In the event that the hearing officer decides that a printed transcript is necessary, all expenses shall be borne by the appellant.

(f) When determining an appeal, the Assistant Secretary for Trade Administration may consider all information submitted during the appeal as well as any recommendations, reports, or other relevant information and documents available to the Department of Commerce, or consult with any other persons or groups.

(g) The submission of an appeal under this section shall not relieve any person from the obligation of complying with the provision of this regulation or official action in question while the appeal is being considered unless such relief is granted in writing by the Assistant Secretary for Trade Administration.

(h) The decision of the Assistant Secretary for Trade Administration shall be made within a reasonable time after receipt of the appeal and shall be the final administrative action. It shall be issued to the appellant in writing with a statement of the reasons for the decision.

Subpart L—Miscellaneous Provisions

§ 700.90 Protection against claims.

A person shall not be held liable for damages or penalties for any act or failure to act resulting directly or indirectly from compliance with any provision of this regulation, or an official action, notwithstanding that such provision or action shall subsequently be declared invalid by judicial or other competent authority.

§ 700.91 Records and reports.

(a) Persons are required to make and preserve for at least three years, accurate and complete records of any trans-

action covered by this regulation (OMB control number 0625-0107) or an official action.

(b) Records must be maintained in sufficient detail to permit the determination, upon examination, of whether each transaction complies with the provisions of this regulation or any official action. However, this regulation does not specify any particular method or system to be used.

(c) Records required to be maintained by this regulation must be made available for examination on demand by duly authorized representatives of Commerce as provided in § 700.71.

(d) In addition, persons must develop, maintain, and submit any other records and reports to Commerce that may be required for the administration of the Defense Production Act and this regulation.

(e) Section 705(e) of the Defense Production Act provides that information obtained under this section which the President deems confidential, or with reference to which a request for confidential treatment is made by the person furnishing such information, shall not be published or disclosed unless the President determines that the withholding of this information is contrary to the interest of the national defense. Information required to be submitted to Commerce in connection with the enforcement or administration of the Act, this regulation, or an official action, is deemed to be confidential under section 705(e) of the Act and shall not be published or disclosed except as required by law.

§ 700.92 Applicability of this regulation and official actions.

(a) This regulation and all official actions, unless specifically stated otherwise, apply to transactions in any state, territory, or possession of the United States and the District of Columbia.

(b) This regulation and all official actions apply not only to deliveries to other persons but also include deliveries to affiliates and subsidiaries of a person and deliveries from one branch, division, or section of a single entity to another branch, division, or section under common ownership or control.

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(c) This regulation and its schedules shall not be construed to affect any administrative actions taken by Commerce, or any outstanding contracts or orders placed pursuant to any of the regulations, orders, schedules or delegations of authority under the Defense Materials System and Defense Priorities System previously issued by Commerce. Such actions, contracts, or orders shall continue in full force and effect under this regulation unless modified or terminated by proper authority.

(d) The repeal of the regulations, orders, schedules and delegations of authority of the Defense Materials System (DMS) and Defense Priorities System (DPS) shall not have the effect to release or extinguish any penalty or li-

ability incurred under the DMS/DPS. The DMS/DPS shall be treated as still remaining in force for the purpose of sustaining any action for the enforcement of such penalty or liability.

§ 700.93 Communications.

All communications concerning this regulation, including requests for copies of the regulation and explanatory information, requests for guidance or clarification, and requests for adjustment or exception shall be addressed to the Office of Industrial Resource Administration, Room 3876, U.S. Department of Commerce, Washington, DC 20230, Ref: DPAS; telephone: (202) 377-4506.

SCHEDULE I TO PART 700—AUTHORIZED PROGRAMS AND DELEGATE AGENCIES

The programs listed in this schedule have been authorized by the Federal Emergency Management Agency for priorities and allocations support under this regulation. They have equal preferential status.

The Department of Commerce has authorized the Delegate Agencies to use this regulation in support of those programs assigned to them, as indicated below.

Program Identification Symbol	Authorized Program	Delegate Agency
Defense Programs		
A1	Aircraft	Department of Defense and Associated Agencies. ¹
A2	Missiles	Do.
A3	Ships	Do.
A4	Tank—Automotive	Do.
A5	Weapons	Do.
A6	Ammunition	Do.
A7	Electronic and communications equipment	Do.
B1	Military building supplies	Do.
B8	Production equipment (for defense contractor's account)	Do.
B9	Production equipment (Government owned)	Do.
C1	Food resources	Do.
C2	Department of Defense construction	Do.
C3	Maintenance, repair and operating supplies (MRO) for Department of Defense facilities.	Do.
C8	Controlled materials for Defense Industrial Supply Center (DISC)	Do.
C9	Miscellaneous	Do.
International Defense Programs		
Canada		
D1	Canadian military programs	Department of Commerce.
D2	Canadian production and construction	Do.
D3	Canadian atomic energy program	Do.
Other Foreign Nations		
G1	Certain munitions items purchased by foreign governments through domestic commercial channels for export.	Department of Commerce.
G2	Certain direct defense needs of foreign governments other than Canada	Do.
G3	Foreign nations (other than Canada) production and construction	Do.
Co-Production		

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Program Identification Symbol	Authorized Program	Delegate Agency
J1	F-16 Co-Production Program	Departments of Commerce and Defense.
Atomic Energy Programs		
E1	Construction	Department of Energy.
E2	Operations—including maintenance, repair and operating supplies (MRO)	Do.
E3	Privately owned facilities	Do.
Other Energy Programs		
F1	Exploration, production, refining and transportation	Department of Energy.
F2	Conservation	Do.
F3	Construction and Maintenance	Do.
Other Defense, Energy and Related Programs		
H1	Certain combined orders (see § 700.17(c))	Department of Commerce.
H2	Controlled materials producers	Do.
H3	Further converters (controlled materials)	Do.
H4	Distributors of controlled materials	Do.
H5	Private domestic production	Do.
H6	Private domestic construction	Do.
H7	Maintenance, repair and operating supplies (MRO)	Do.
K1	Federal supply items	General Services Administration.
N1	Approved civil defense programs	Federal Emergency Management Agency.

¹ Department of Defense agencies are: Army, Navy (including Coast Guard), Air Force, Defense Logistics Agency, and National Security Agency. Associated Agencies of the Department of Defense include Central Intelligence Agency, Federal Aviation Administration, and National Aeronautics and Space Administration.

[49 FR 30414, July 30, 1984. Redesignated at 54 FR 601, Jan. 9, 1989, and amended at 56 FR 8109, Feb. 27, 1991]

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SCHEDULE IV TO PART 700—COPPER CONTROLLED MATERIALS PRODUCERS' SET-ASIDE BASE AND PERCENTAGES

Set-aside Base—Average monthly shipments for a producer's own account during the previous calendar year.

Product	Set-aside percentages ¹
Brass mill products:	
Unalloyed:	
Plate, sheet, strip, and rolls	3
Rod, bar, shapes, and wire	3
Seamless tube and pipe	2
Alloyed:	
Plate, sheet, strip, and rolls	2
Rod, bar, shapes, and wire	2
Seamless tube and pipe	7
Military ammunition cups and discs	10
Copper wire mill products:	
Bare and tinned	2
Weatherproof	2
Magnet wire	2
Paper and lead power cable	2
Paper and lead telephone cable	2
Asbestos cable	2
Portable and flexible cord	2
Communications wire and cable	2
Shipboard cable	2
Automotive and aircraft wire and cable	2
Insulated power cable	2
Signal and control cable	2
Coaxial cable	2
Copper-clad steel wire containing over 20 percent copper by weight regardless of end use	2
Copper foundry products	2
Copper and copper-base alloy powder mill products	(2)

¹ Applies to metal weight, except copper wire mill products, which are by copper content.

² No reserve space required. Producers of these products are nevertheless required to accept rated orders for such products in accordance with the provisions of this regulation.

SCHEDULE V TO PART 700—NICKEL ALLOYS CONTROLLED MATERIALS PRODUCERS' SET-ASIDE BASE AND PERCENTAGES

Set-aside Base—Average monthly shipments, by each producer, during the previous calendar year.

Product	Set-aside percentages
Rod and bars (except anode bars):	
Hot-rolled, including wire rod	10
Forging quality	10
Cold-finished	10
Sheet and strip:	
Hot-rolled	10
Cold-rolled	10
Foil	10
Plate	10
Pipe, tubing	10
Wire	10

Product	Set-aside percentages
Other mill forms:	
Ingots	10
Blooms, slabs, billets	10
Powder	10
Shapes and forms not listed above (including anode bars)	10
Castings (less gates and risers, rough as cast)	10

APPENDIX I TO PART 700—DELEGATIONS OF AUTHORITY

DPAS DEL. 1—Delegation of Authority to the Secretary of Defense; Defense Priorities and Allocations System (15 CFR part 700)

1. Authority.

Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*); Executive Order 10480, 18 FR 4939, 3 CFR 1949-1953 Comp., p. 962, as amended; and Defense Mobilization Order (DMO) 3, 44 CFR 322.

2. Purpose.

(a) This document delegates certain authority to the Secretary of Defense necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. Rating Authority.

(a) The Secretary of Defense is delegated the authority to place rated contracts and orders in support of Department of Defense (DOD) programs authorized by the Director, Federal Emergency Management Agency.

(b) The Secretary of Defense is delegated the authority to use the DX rating symbol in placing rated orders for those authorized programs determined by the President to be of the Highest National Priority as described in the DOD Master Urgency List.

4. Co-production Programs.

(a) The Secretary of Defense may request priority rating authority from DOC for specific co-production programs, and if granted, may authorize only those foreign firms which have entered into a formal co-production agreement with a U.S. producer to use priority ratings.

(b) DOC may authorize the use of priority ratings by other foreign firms providing items necessary to the co-production activity on a case-by-case basis.

5. Production and Construction Equipment.

(a) The Secretary of Defense may authorize persons to place rated orders for delivery of production equipment required to support authorized programs of DOD, when the equipment is necessary for the timely performance of rated orders and timely delivery

of the equipment cannot be obtained otherwise.

(b) The Secretary of Defense may authorize persons to place rated orders for delivery of construction equipment, when the equipment is to be used for authorized construction projects and when timely delivery of the equipment cannot be obtained otherwise.

6. *Delivery Scheduling.*

The Secretary of Defense is delegated the authority to reschedule deliveries of materials which are required in support of DOD programs, provided that such authority shall be used (1) only to reschedule deliveries among contracts or orders assigned priority ratings by DOD, and (2) only to the extent that such rescheduling of deliveries requires no change in production schedules of other rated orders.

7. *Special Priorities Assistance.*

The Secretary of Defense may sponsor requests by persons for special priorities assistance upon determining the defense urgency of the requested assistance. DOD will: (1) serve as the initial point of contact for persons needing assistance, (2) verify the accuracy of the information provided and make reasonable efforts to resolve the issues, and, when necessary, (3) expeditiously forward the request through established DOD channels to DOC to facilitate timely resolution. Upon receipt of the request for special priorities assistance, DOC will take immediate action to effect resolution and will keep DOD advised of progress.

8. *Controlled Materials.*

The Secretary of Defense is delegated the authority to make allotments of controlled materials to other agencies in support of authorized defense programs.

9. *Compliance, Audits, and Training.*

In exercising this delegation, the Secretary of Defense should ensure that both DOD personnel and defense contractors are in full compliance with the provisions of the DPAS regulation. Accordingly:

(a) The Secretary of Defense is delegated the authority to review the implementation of the DPAS by all persons who are in receipt of rated orders supporting DOD programs. However, this review shall not include inquiries into any unrated activities of these persons.

(b) The Secretary of Defense shall notify DOC of any alleged violations of the priorities and allocations provisions of the Defense Production Act or the DPAS regulation.

(c) The Secretary of Defense should conduct a continuing training program to ensure that appropriate DOD and contractor personnel are thoroughly familiar with the provisions of the DPAS and this delegation.

10. *Limitations of Authority.*

(a) This delegated authority shall not be used for (1) civilian items for resale in Military Exchanges or the packaging for such

items; (2) material purchased from exclusively retail establishments; (3) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management; or (4) direct procurement by or for DOD of any items specifically set forth in the Statement of Conditions to this delegation (not published).

(b) This delegation shall be implemented in accordance with the DPAS regulation, the Statement of Conditions to this delegation (not published), and any other regulations or official actions issued by DOC. It does not limit the authority of the Secretary of Commerce under Executive Order 10480 or other authority.

11. *Redelegations of Authority.*

The authority granted by this delegation may be redelegated within DOD and to other agencies of the United States administering DOD programs. Any redelegations of such authority shall be made in writing with a copy furnished to DOC. No other redelegations of such authority shall be made without the prior written approval of DOC.

12. *Effective Date and Revocation of Previous Delegations.*

This delegation of authority shall take effect August 29, 1984, revoking all previous delegations issued by DOC to DOD relating to these authorities.

Dated: June 21, 1984.

Walter J. Olson,

Deputy Assistant Secretary of Commerce for Export Administration.

DPAS DEL. 2—Delegation of Authority to the Secretary of Energy; Defense Priorities and Allocations System (15 CFR part 700)

1. *Authority.*

Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, et seq.); Executive Order 10480, 18 FR 4939, 3 CFR 1949-1953 Comp., p. 962, as amended; Executive Order 11912, 41 FR 15825, 3 CFR 1976 Comp., p. 114, as amended; Executive Order 12148, 44 FR 43239, 3 CFR 1979 Comp., p. 393, as amended; Defense Mobilization Order (DMO) 3, 44 CFR 322; and DMO-13, 44 CFR 330.

2. *Purpose.*

(a) This document delegates certain authority to the Secretary of Energy necessary to the effective implementation of the Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700).

(b) Certain specifics concerning the implementation of this delegated authority are contained in a Statement of Conditions to this delegation issued by the Office of Industrial Resource Administration (OIRA), Department of Commerce (DOC).

3. *Rating Authority.*

(a) The Secretary of Energy is delegated the authority to place rated contracts and orders in support of Department of Energy

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APPENDIX III TO PART 700—FORM ITA-999; REQUEST FOR SPECIAL PRIORITIES ASSISTANCE

OMB No. 0625-0015

FORM ITA-999 REV. 7-84 U.S. DEPARTMENT OF COMMERCE INTERNATIONAL TRADE ADMINISTRATION REQUEST FOR SPECIAL PRIORITIES ASSISTANCE (TO BE FILED WITH SPONSORING GOVERNMENT AGENCY) READ INSTRUCTIONS ON REVERSE SIDE (Typewrite or print in ink) No priorities assistance may be granted unless a completed application form has been received (50 U.S.C. App. Sec. 2155). Any information furnished is deemed confidential pursuant to 50 U.S.C. App. Sec. 2155(e).		FOR ITA USE ONLY Case No. _____ Received _____ Routed to _____	
1. TO: (Fill in name and address of appropriate Sponsoring Govt. Agency) _____ 2. a. Applicant's name and complete address (Street, City, State and ZIP code). _____ b. Telephone No. (Include Area Code) _____ c. Contact's Name _____		3. Name and address of Applicant's customer. _____ 4. Purchase order or contract number of Applicant's customer. _____ Date _____	
5. Rating on customer's purchase order. _____ 6. Date Applicant accepted customer's purchase order. _____		7. If known, identify the Government program, end product, and contract number for which Applicant's item(s) is required by customer. _____ 8. Description of item(s) to be delivered or service rendered by Applicant through use of item(s) shown in (10). _____	
9. How will item(s) shown in (10) be used? (Check) <input type="checkbox"/> As Production Material <input type="checkbox"/> For Construction Project <input type="checkbox"/> As Capital Equipment <input type="checkbox"/> As Maintenance, Repair and Operating Supplies			
10. ITEM(S) FOR WHICH APPLICANT REQUESTS ASSISTANCE			
Indicate quantity (Lbs., ft., pcs.) (a)	Description (As appearing in Applicant's purchase order with additional information, such as: model, part, die number, etc.) (b)	Approximate dollar value of quantity shown (c)	
11. a. Applicant's purchase order number to Supplier and date. (Attach copy and all amendments and change orders) _____ b. Rating on Applicant's purchase order. If none, so state. _____ c. Date Applicant's purchase order accepted by Supplier. (Attach copy of acceptance) _____			

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FOR USE OF GOVERNMENT AGENCY ENDORSING THIS REQUEST (FIELD)		
18. a. Actions taken to attempt resolution of applicant's problem.	By whom	Date
b. Estimate of realistic shipment date.		
c. Coordination of other action taken.	By whom	Date
FOR USE OF GOVERNMENT AGENCY SPONSORING THIS REQUEST (HEADQUARTERS ONLY)		
19. a. Name of Sponsor.		b. Sponsor's address.
c. Sponsor's Case Reference No.	d. Name of person handling case in Sponsor's office.	Telephone No.
e. Sponsor's program or service to be benefited by Applicant's product or service (Item (7) on first page).		f. Recommendation.
g. Statement of urgency of particular program or service and Applicant's part in it. Specify the extent to which failure to obtain requested assistance will adversely affect the program or service.		
h. Signature.		
_____ Signature of sponsor's authorized official		_____ Title
_____ Type name of authorized official		_____ Date

INSTRUCTIONS FOR FILING FORM ITA-999

REQUESTS FOR SPECIAL PRIORITIES ASSISTANCE MAY BE FILED:

- a. when the regular procedures of the Defense Priorities and Allocations System (DPAS) will not obtain delivery of item(s) in time to meet required delivery schedules in support of authorized national defense programs;
- b. to request assistance in placing rated orders; and
- c. to request authority to use a priority rating. Applicants for priority rating authority should complete only sections 1, 2, 10, 11, 12, 16, 19, and the Certification of this form.

REQUESTS FOR ASSISTANCE MUST BE TIMELY AND MUST ESTABLISH:

- a. the urgent defense related need for the item(s) covered by the associated rated order; and
- b. that the applicant has exercised reasonable effort to resolve the problem.

WHERE TO FILE — Each ITA-999 must be sponsored by a Government Agency.¹ Completed forms should be filed with the Government agency having jurisdiction over the contract.

Department of Defense — File with local Defense Contract Administration Service Office or plant representative.

Department of Energy (DOE) — File with appropriate Field Office.

General Services Administration — File with the contracting officer in the Regional Office or the Headquarters Office in Washington, D.C., which ever issued the contract.

If the appropriate agency cannot be determined from the applicant's customer, this form may be filed with the Priorities and Allocations Division, Room 3B76,

International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20536.

COPIES TO BE FILED — The applicant should file an original and five (5) copies of this form with the appropriate Government Agency.

APPLICATIONS FOR PRIORITY RATING TO OBTAIN CAPITAL/ PRODUCTION EQUIPMENT — Prime and subcontractor applications for a priority rating to obtain capital/production equipment for the performance of a rated order or contract for a Department of Defense procurement must file on Department of Defense Form DD-491, "Application for Rating for Production Equipment," in accordance with the instructions on that form.

SPECIAL INSTRUCTIONS

If the space in any block is insufficient for a clear and complete statement of the information called for, use the "continuation" space provided or a separate sheet or letter with a copy attached to each copy of the form.

Entries in block 10 must be restricted to those appearing on a single purchase order of the applicant, except in those instances where "special priorities assistance" is requested for additional purchase orders that have been placed with the same supplier for the same item(s) in which case such purchase orders may be combined on one application; however, each purchase order number must be identified and the quantity and rating on each purchase order must be shown separately.

If disclosure of the use to which the particular customer will put Applicant's product is prohibited by security regulations, give a general description in block 10 and enter "classified."

¹ "Item" is defined in the DPAS as any raw, in-process, or manufactured material, article, commodity, supplies, equipment, component, accessory, part, assembly, or product of any kind, technical information, process, or service.

² "Government Agency" means the Department of Defense, the Department of Energy, General Services Administration, or other Government agencies so designated.

CONTINUATION

(Identify each statement with the block number concerned)

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tractors are in compliance with the provisions of the DPAS when placing rated orders in the United States, including those for controlled materials.

2. DOC will ensure that U.S. Government personnel and U.S. contractors are in compliance with the provisions of the DPAS when placing rated orders in Canada, including controlled materials.

3. The DSS will inform DOC of any alleged violations of the DPAS of which it may become aware.

I. Training

1. The DSS will develop and implement training programs on the DPAS for appropriate Canadian Government procurement and contract administration personnel and contractor personnel.

2. DOC will develop and implement training programs on the DPAS for appropriate U.S. Government procurement and contract administration personnel and contractor personnel.

3. DSS and DOC training programs shall be coordinated to ensure the conduct of a comprehensive program and to minimize duplication.

J. Effective Date

This Memorandum of Understanding shall take effect August 29, 1984.

Canadian Department of Supply and Services
Peter Smith,
Assistant Deputy Minister, Operations

Date: June 26, 1984.

U.S. Department of Commerce
Walter J. Olson,
Deputy Assistant Secretary, Export Administration

Date: June 21, 1984.

ATTACHMENT A—FEDERAL SUPPLY CLASSIFICATION CLASSES, GROUPS, AND ITEMS NOT ELIGIBLE FOR PRIORITY RATINGS

Group

- 35 Services and trade equipment—except:
3510 Laundry and dry cleaning equipment
3520 Shoe repairing equipment
3530 Industrial sewing machines and mobile textile repair shoes
3540 Wrapping and packaging machinery
71* Furniture
72* Household and commercial furnishings and appliances—except:
7240 Household and commercial utility containers

*DOC will consider requests for special priority rating authorization in the procurement of these items.

- 73* Food preparation and serving equipment—except:
7310 Food cooking, baking and serving equipment
7320 Kitchen equipment and appliances
7360 Sets, kits, and outfits: food preparation and serving
74 Office machines, visible record equipment, and data processing equipment**
75* Office supplies and devices
77* Musical instruments, phonographs and home-type radios
78* Recreational and athletic equipment
79 Cleaning equipment and supplies
85* Toiletries
87* Agricultural supplies
89 Subsistence
91* Fuels, lubricants, oils, and waxes—except:
9135 Liquid propellant fuels and oxidizers, chemical base
9150 Oils and greases: cutting, lubricating, and hydraulic
9160 Miscellaneous waxes, oils and fats
94* Non-metallic crude materials—except:
9420 Fibers: vegetable, animal and synthetic
99* Miscellaneous

Class

- 7630 Newspapers and periodicals
7660 Sheet and book music
8325 Fur materials
8425 Underwear and nightwear, women's
9610 Ores

~~PARTS 701—704 (RESERVED)~~

~~PART 705—EFFECT OF IMPORTED ARTICLES ON THE NATIONAL SECURITY~~

- Sec.
705.1 Definitions.
705.2 Purpose.
705.3 Commencing an investigation.
705.4 Criteria for determining effect of imports on the national security.
705.5 Request or application for an investigation.
705.6 Confidential information.
705.7 Conduct of an investigation.
705.8 Public hearings.
705.9 Emergency action.
705.10 Report of an investigation and recommendation.

**This Group does not include general purpose automatic data processing equipment, software, supplies and support equipment (see Group 70).

Only those items subject to DOC authority as delegated by E.O. 10480.

APPENDIX IV TO PART 700—MEMORANDUM OF UNDERSTANDING ON PRIORITIES AND ALLOCATIONS SUPPORT BETWEEN THE U.S. DEPARTMENT OF COMMERCE AND THE CANADIAN DEPARTMENT OF SUPPLY AND SERVICES

A. Purpose

Since 1950, the United States and Canada have been assisting each other on priorities and allocations for programs important to the defense of both nations. Details on the implementation of that assistance were spelled out in the U.S. Defense Priorities System Regulation No. 2 (DPS Reg. 2), Operations of the Priorities and Allocations System between Canada and the United States (15 CFR part 351). The Defense Priorities and Allocations System (DPAS) regulation (15 CFR part 700) supersedes the Defense Materials System and Defense Priorities System regulations (15 CFR parts 330 through 351), including DPS Reg. 2. While the revised regulation addresses the procedures for obtaining priorities and allocations support from the United States and Canada, it does not fully detail the working relationship between the United States and Canada. Accordingly, the following Memorandum of Understanding is set forth between the U.S. Department of Commerce and the Canadian Department of Supply and Services.

B. General

1. The Office of Industrial Resource Administration, U.S. Department of Commerce (DOC), is the United States point of contact for the Canadian government with respect to priorities and allocations.
2. The Supply Information and Data Management Branch, Canadian Department of Supply and Services (DSS), is the Canadian point of contact for the U.S. government with respect to priorities and allocations.

C. Priority Rating Authority

1. DOC will authorize the DSS to use priority ratings, including those for the procurement of controlled materials, in the United States in support of the following programs authorized by the Federal Emergency Management Agency:

D1—Canadian Military Programs
D2—Canadian Production and Construction
D3—Canadian Atomic Energy Program

2. DOC must receive requests for priority rating authority, by program, at least ninety days in advance of the calendar quarter in which the authorization is required. Requests with respect to controlled materials requirements must be received at least 240 days in advance of the calendar quarter in which authorization is required.

D. DX Authority

DSS may authorize the use of the "DX" rating symbol for procurements in the United States which are in support of U.S. "DX" rated programs.

E. Items Which Will Not Receive Priority Rating Authority

Priority ratings may not be used for procurements in the United States of (1) civilian items for resale in Military Exchanges or the packaging for such items; (2) material purchased from exclusively retail establishments; (3) direct procurement of those Federal Supply Classification classes, groups, or items specified in Attachment A to this Understanding, unless those items are to be used as production material for an authorized program; or (4) procurement of items to be used primarily for administrative purposes, such as for personnel or financial management.

F. Special Priorities Assistance

1. DOC will provide special priorities assistance as needed to Canadian procurements in the United States which are in support of D1, D2, and D3 programs when requests for such assistance are sponsored by DSS.
2. DSS will provide assistance to United States procurements in Canada which are in support of authorized programs when requests for such assistance are sponsored by DOC.

G. Forms and Reports

1. Canadian requests for special priorities assistance from the United States will be submitted to DOC on Form ITA-999, "Request for Special Priorities Assistance".
2. Requests for priority rating authority will be submitted to DOC on Form DSS-1451-1, "Application for U.S. Priority Rating Covering Importation of Quarterly Requirements of Materials from the United States", on Form DSS-1451-2, "Application for U.S. Priority Rating Covering Specific Materials", or other forms as may be established by DSS.
3. DSS will report monthly on the number of rating authorizations and their dollar value against DOC rating authorizations during the previous month.
4. DSS will report, two months following the close of each calendar quarter, the number and quantity of controlled materials allotments issued against DOC authorizations for each program during that quarter.
5. United States requests for assistance from Canada will be submitted to DSS by letter.

H. Compliance

1. DSS will ensure that Canadian Government personnel and Canadian defense con-

APPENDIX B

DoD MASTER URGENCY LIST (MUL)

The DoD MUL is classified SECRET.
Because it is classified, the DoD MUL is not distributed
with the DoD Priorities and Allocations Manual (PAM).
The DoD MUL is available on a "need-to-know" basis
from OASD(ES).